

ICC MOOT COURT COMPETITION IN THE ENGLISH LANGUAGE

THE OFFICE OF THE PROSECUTOR

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THE APPEALS CHAMBER

**Case before the International Criminal Court (ICC):
Prosecutor v. Corlis Valeron of The Republic of Regale**

**The Office of the Prosecutor'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**

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LIST OF ABBREVIATIONS

¶	Paragraph number(s)
AC	Appeals Chamber
AJ	Appeals Judgment
CAH	Crime(s) against humanity
Case	2023 International Criminal Court Moot Competition Problem (incl. Corrections and Clarifications)
CEO	Chief Executive Officer
Court/ICC	International Criminal Court
Corp.	Corporation
Defendant	Corlis Valeron
Defense	Counsel for the Defendant
ECCC	Extraordinary Chamber in the Courts of Cambodia
EOC	Elements of Crimes
fn.	Footnote number(s)
GA Resolution 377(V) of 1950	GA Resolution 377(V)
Giskar	The State of Giskar
GL	The Golden Lowlands
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IIM	International Investigative Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for International Crimes Committed in the State of Giskar
IIM for Syria	International, Impartial, Independent Mechanism to Assist in

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the Investigation and Prosecution of Persons Responsible for
the Most Serious Crimes under International Law Committed
in the Syrian Arab Republic since March 2011

International Investigative Mechanism to Assist in the
Investigation and Prosecution of Persons Responsible for
International Crimes Committed in the State of Giskar
Report dated 20 April 2022

IIM Report

The Office of the Prosecutor'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

Memo

“OBA”

OLA

OTP

p.

Prosecution

PTC

PTC VI's Decision

Regale

RS

SCSL

TC

TJ

UN

UDHR

UNGA

UNSC

Operation Bug Attack

United Nations Office of Legal Affairs

Office of the Prosecution

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Counsel for the Prosecution

Pre-Trial Chamber

Pre-Trial Chamber VI on Confirmation of Charges against
the Defendant

The Republic of Regale

Rome Statute

Special Court for Sierra Leone

Trial Chamber

Trial Judgement

United Nations

Universal Declaration of Human Rights

United Nations General Assembly

United Nations Security Council

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VCLT

Vienna Convention on Laws and Treaties

VP

Vice President

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36.	Garner, Black's Law Dictionary, West, 2009 [Law Dictionary (2009)]	39
37.	Antonio Cassese and Paola Gaeta, <i>Cassese's International Criminal Law</i> , Oxford University Press, 3rd Edition, Oxford, 2013 [Cassese (2013)]	33
38.	Kenneth S. Gallant, <i>International Criminal Jurisdiction : Whose Law Must We Obey</i> , Oxford University Press, United Kingdom, 2022 [Gallant (2022)]	17
39.	Mark Klamberg (ed.), <i>Commentary on the Law of the International Criminal Court</i> , TOAEP, Brussels, 2017 [Klamberg (2017)]	17, 19–20, 40
40.	Michael Scharf, <i>The Theory and Practice of International Criminal Law</i> , Brill, Netherlands, 2012 [Scharf (2008)]	21
41.	Simma et al, <i>The Charter of the United Nations: A commentary</i> , Oxford University Press, United Kingdom, 2012 [Simma et al (2012)]	23
42.	Victor Tsilonis, <i>The Jurisdiction of the International Criminal Court</i> , Springer, Netherlands, 2019 [Tsilonis (2019)]	18
43.	William A. Schabas, <i>The International Criminal Court : A Commentary on the Rome Statute</i> , Oxford University Press, United Kingdom, 2010 [Schabas (2010)]	19–20

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44.	Anthony J. Colangelo, "Double Jeopardy and Multiple Sovereigns: A Jurisdictional Theory", <i>Washington University Law Review</i> , Vol. 86, Issue 4, (2009) [Colangelo (2009)]	18
45.	Alfred Verdross, "General International Law and the United Nations Charter", <i>International Affairs</i> , Vol. 30, Issue 3, (1954) [Verdross (1954)]	23
46.	Chile Eboe-Osuji, "Crimes Against Humanity: Directing Attacks Against a Civilian Population", <i>African Journal of Legal Studies</i> , pp. 122-124 (2008) [Eboe-Osuji (2008), p122-124]	26
47.	Diana Kearney, "Food Deprivations as Crimes Against Humanity", <i>International Law and Politics</i> , Vol. 46:253, pp. 255, 258 (2010) [Kearney (2010), p.255,258]	28, 31
48.	LING Yan, "Non-States Parties and the Preliminary Examination of Article 12(3) Declarations", <i>Quality Control in Preliminary Examination</i> , Vol. 2, p. 431–432 (2018) [LING Yan (2018), p.431-432]	20
49.	Mahnousk H. Arsajani & W. Michael Reisman, "The Law-in-Action of the International Criminal Court", <i>Cambridge University Press</i> , Vol. 99:2, p. 387 (2017) [Arsajani, Reisman (2017)]	21
50.	Madeline Morris, "The Jurisdiction of the International Criminal Court over Nationals of Non-Party States", <i>ILSA Journal of International & Comparative Law</i> , Vol. 6, (1999) [Morris (1999)]	22
51.	Soltani et al, "The Evolution of the Concept of International Peace and Security in light of UN Security Council Practice", <i>Open Journal of Political Science International Affairs</i> , Vol. 7, Issue 1, (2017) [Soltani et al (2017)]	23
52.	Talita de Souza Dias, "The Retroactive Application of the Rome Statute in Cases of Security Council Referrals and Ad hoc Declarations", <i>Journal of International Criminal Justice</i> , Vol. 16, p. 67 (2018) [Dias (2018), 67]	16
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STATEMENT OF FACTS

1. Background

1. The case involves two States located on the Stormbreak Peninsula: Giskar and Regale. Both States are not party to the RS. Regale is a member of the UN.
2. Giskar is a developing State whose economy is based on mineral extraction, logging, fishing, and farming.
3. Regale is an industrialized State with a large industry of biotechnology research and production.

2. The Aerial Attacks by Corlis Valeron

4. The Defendant, a national of Regale, serves as President/CEO of Karaxis Corp., a corporation run and controlled by Regale that specializes in the bioengineering industry.
5. Karaxis has been secretly developing designer insects that are pesticide resistant yet vulnerable to the plant toxins exclusively engineered by Karaxis Corp.
6. “OBA” was conducted from 1 March 2019–September 2020, by repeatedly aerially releasing bioengineered insects on the Giskar side of the Cascading River.

3. The Aftermath of the “OBA”

8. Due to “OBA”, over 65% of crops grown in the GL were destroyed by bioengineered insects, while there was no damage done to Regale’s crops. The agro-based economy of the GL crashed, and food prices quadrupled. 20,000 people in the GL died of starvation, while 5,000 farmers committed suicide.
9. On 15 November 2020, GL held a plebiscite and overwhelmingly voted for secession from Giskar. GL declared its independence from Giskar on 15 January 2021 after a plebiscite. On 15 May 2021, GL entered into a Merger Agreement and became part of Regale.

4. Proceedings before the Court

10. On 10 April 2022, the Registrar of the ICC received a declaration submitted by Giskar under Article 12(3) of the RS accepting the ICC’s jurisdiction with respect to alleged crimes committed in GL since 1 March 2019.

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11. 38 States party to the RS then requested the OTP to open an investigation on CAH committed by the Defendant and other nationals of Regale in the territory of Giskar on 21 April 2022.
12. On 1 May 2022, the PTC granted the Prosecution's request under Article 15(4) RS to initiate an investigation into the alleged crimes committed by the Defendant. Regale then informed the Registrar on 10 May 2022 that the Defendant had done no wrong and declined to cooperate.
13. On 20 May 2022, the Prosecution requested a confirmation of charges against the Defendant for committing ecocide under Article 7(1)(k) of RS. The following day, the Defendant filed a motion in opposition to confirm charges. On 30 July 2022, PTC confirmed the charges of the Defendant and ordered that the Registrar notify the parties and participants of this decision.

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ISSUES

[A]

Whether the PTC erred in holding that Giskar's acceptance of jurisdiction concerning international crimes committed in the region of GL 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?

[B]

Whether the PTC erred in holding that it had subject matter jurisdiction in this case under Article 7(1)(k) of the RS?

[C]

Whether the PTC 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 OLA?

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SUMMARY OF ARGUMENTS

[A]

The PTC did not err in accepting Giskar's jurisdiction under Article 12(3) of the RS regarding the International Crime Committed in GL.

1. The ICC is granted Jurisdiction over the Crimes Committed Prior to Giskar's Declaration on 10 April 2022
 2. Article 34 VCLT would not be a hindrance to the Court's exercise of jurisdiction with respect to the Defendant's alleged acts
-

[B]

The PTC did not err in holding that the defendant's implementation of "OBA" constitutes as crime against humanity

1. The Defendant's Commission Constituted as "Other Inhumane Acts" Under Article 7(1)(k) of the RS
 2. The Defendant is individually responsible through joint commission under Article 25(3)(a)
-

[C]

The PTC did not err in holding the crime based on the sole report of IIM

1. The Legitimacy of the IIM Report is acceptable as the establishment of IIM is not *ultra vires*
2. The IIM Report is sufficient to establish substantial grounds to believe as pursuant to Article 61(7)

I. THE PTC DID NOT ERR IN ACCEPTING GISKAR’S JURISDICTION UNDER ARTICLE 12(3) REGARDING THE INTERNATIONAL CRIME COMMITTED IN GL

1. The Defendant claims that as GL has become part of Regale, the PTC has erred by accepting a declaration filed by Giskar, a non-party State to the ICC over the CAH committed by the Defendant under Article 12(3) of the RS. In regards to this, the Prosecution submits that the PTC did not err in accepting Giskar’s jurisdiction under Article 12(3) of RS as **[A]** the ICC may exercise jurisdiction over the crimes committed prior to Giskar’s declaration on April 2022 and that **[B]** Article 34 of the VCLT would not be a hindrance to the ICC’s exercise of jurisdiction.

A. The ICC may Exercise Jurisdiction over the Crimes Committed Prior to Giskar’s Declaration on 10 April 2022

2. The Prosecution submits that GL’s change of sovereignty following its independence on 15 January 2021 and merger with Regale on 15 May 2021 does not nullify the PTC’s decision in granting jurisdiction as the Prosecution submits that **[i]** the ICC has been granted temporal and territorial jurisdiction over the Defendant’s alleged crime. Additionally, **[ii]** 38 state parties to the ICC have referred the Defendant’s alleged crime through Article 13(a) and Article 14 of the RS, further triggering the Court’s exercise of jurisdiction.
 - i. The ICC may Exercise Temporal and Territorial Jurisdiction over the Crimes Committed by the Defendant prior to Giskar’s Declaration
3. The Prosecution submits that the ICC may exercise temporal jurisdiction over the crimes committed by the Defendant prior to Giskar’s declaration considering the content of Giskar’s declaration and the timing of information acquired by Giskar from Kristen Kole after GL’s change of sovereignty.
4. Article 12(3) of RS does not explicitly specify the “time” of which the ICC may exercise jurisdiction for a non-State party of RS after its declaration. However, the ICC has confirmed that a non-State party is able to make a declaration accepting the ICC’s exercise of jurisdiction retroactively¹. “Retroactive” applies if a state does not accept the Court’s exercise of jurisdiction over crimes committed by its nationals or on its territory at the time of said crime, but does so after the crime has already occurred², as indicated by the precedent of Côte d’Ivoire³.

¹ Côte d’Ivoire (ICC-02/11-01/11-321), ¶55

² Dias (2018), p. 67

³ Côte d’Ivoire (ICC-02/11-01/11-321), ¶83

5. In 2003, Côte d'Ivoire lodged a 12(3) declaration accepting the ICC's jurisdiction over crimes committed on its territory where in its declaration, Côte d'Ivoire clearly stated that it recognizes the jurisdiction of the Court *for the purpose of identifying, prosecuting, and judging the acts committed on its territory "since 19 September 2002"*⁴. The declaration filed by Côte d'Ivoire in 2003 postdates the criminal acts that were referred to, which occurred since 19 September 2002⁵ but for the purpose of addressing crimes committed in the past⁶, the ICC has acknowledged that when a declaration is explicit and precise as to its scope, the temporal jurisdiction may be extended towards crimes committed before the declaration was made⁷.
6. The content of Giskar's declaration states that it "*..., accepts the jurisdiction of the Court for the purpose of identifying, prosecuting, and judging [...] international criminal acts committed in the territory of Giskar since 1 March 2019*". With Giskar's clear emphasis in its declaration with regards to the Defendant's alleged crime in GL, Giskar has allowed for the ICC to extend the *ratione temporis* jurisdiction of the Court to adjudicate the crime committed by the Defendant since 1 March 2019.
7. Moreover, in the event that the Defendant argues that Giskar should have filed a declaration under Article 12(3) from when the crimes occurred back in 2019, the Prosecution considers the timing in which Giskar received information from Kristen Kole regarding the Defendant's involvement.
8. Giskar had only received information regarding "OBA" and the Defendant's involvement from Karaxis Corp's Executive VP in April of 2022, which occurred after GL's secession. Prior to this, Giskar was unaware of Defendant's plan for "OBA". Thus, Giskar was only able to file the declaration after receiving sufficient information of the crime committed by the Defendant which coincidentally occurred after GL's secession from Giskar.
9. Regarding territorial jurisdiction, based on the principle of territorial sovereignty, a state may exercise its jurisdiction upon acts committed in its territory⁸. Theoretically, in order to allow for a State to exercise territorial jurisdiction, subjective or objective territorial aspects

⁴ Côte d'Ivoire Declaration

⁵ *Ibid.*

⁶ Côte d'Ivoire (ICC-02/11-01/11-321), ¶30

⁷ Klamburg (2017), fn. 180

⁸ Gallant (2022), p.181

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must be fulfilled. The subjective aspect, otherwise known as “subjective territoriality”, allows a state to claim jurisdiction over crimes or activities that are physically committed within a state’s territorial borders.⁹ Whereas objective aspects allows a state to exercise jurisdiction over crimes that take effect within its borders even if the perpetrator performs the act outside of its borders¹⁰.

10. In the present case, the Defendant implemented “OBA”, the operation of which the CAH was allegedly committed, from March 2019 to September 2020 through repeated aerial releases of bioengineered insects on the Giskar side of the Cascading River¹¹. This act was committed by the Defendant whilst GL was a part of Giskar’s territory.
11. It might be argued that GL would fall under Regale’s jurisdiction after its secession. However, the Prosecution would like to highlight that the effects of the “OBA” were apparent in Giskar whereas Regale enjoyed no consequence. While in Giskar’s territory, GL suffered severe consequences, including the collapse of their agro-economy and the deaths of thousands in the region as a result of the “OBA”¹². As a result of this, GL voted to secede from Giskar¹³. Losing the territory GL is detrimental to Giskar, as GL made up 33% of Giskar’s total population and is the most economically prosperous region in Giskar¹⁴.
12. In any case, it was reported that the Defendant’s alleged commission involved repeated aerial release of bioengineered bugs unto Giskar’s side of the Cascading River¹⁵. It can be seen in the map of the Storm Peninsula that Giskar’s side of the Cascading River stretches from the Iron Highlands to GL. The Iron Highlands is one of Giskar’s four semi-autonomous regions, and is still within Giskar’s territorial jurisdiction.
13. The OTP has once submitted that in order for the Court to be able to exercise its jurisdiction, there needs to be at least one element of an Article 5 crime present in the territory of a state party¹⁶. Although Giskar is not a state party to the ICC, the same principle would follow as Giskar has lodged an *ad-hoc* declaration accepting the ICC’s exercise of jurisdiction through Article 12(3) of the RS with respect to the Defendant’s alleged crime. In the present case,

⁹ Tsilonis (2019), p.64 ; Colangelo (2009), p.792

¹⁰ *Ibid.*

¹¹ Case ¶7

¹² IIM Report ¶7

¹³ *Ibid.* ¶8

¹⁴ *Ibid.* ¶¶2–3

¹⁵ IIM Report, ¶6

¹⁶ Myanmar (ICC-RoC46(3)-01/18), ¶¶63–64

the Prosecution argues that the Defendant's acts of releasing bioengineered bugs unto Giskar's side of the Cascading River resulted in great devastation to Giskar's economy and death amongst civilians while being aware of the consequences of such actions, constituting CAH¹⁷.

14. As the Defendant's alleged acts took place in Giskar's side of the Cascading River; including the Iron Highlands; with Giskar consenting to the Court's exercise of jurisdiction on its territory, the Court would have jurisdiction regardless of the secession as the river stretching over the Iron Highlands is still a region within Giskar's jurisdiction. This would also be supported by the fact that Giskar's declaration stated that Giskar has accepted the Court's exercise of jurisdiction with respect to the Defendant's alleged acts "*in the territory of Giskar*", which does not solely include GL.

15. Therefore, the Prosecution concludes that as the ICC has been granted temporal jurisdiction, the change in GL's sovereignty will not affect jurisdiction of ICC over the crime that occurred in GL, as temporally when the crime took place, Giskar is the state with relevant territorial jurisdiction. Moreover, the devastating effects of the Defendant's alleged acts impacted Giskar as a whole as well, fulfilling the objective aspects of territorial sovereignty. Lastly, regardless of anything, Giskar is still the state relevant territorial jurisdiction as the Defendant's alleged acts also took place in the river stretching over Iron Highlands, a region still within Giskar's jurisdiction.

ii. 38 State parties to ICC Have also Referred the Crime to the Prosecutor Pursuant to Article 14 of RS

16. It is important to note that as non-party states are accepting the ICC's jurisdiction on an *ad-hoc* basis, the commitment of non-party states through Article 12(3) is limited to the crimes covered by the declaration and does not embrace any investigation and/or prosecution of crimes other than the crimes in question¹⁸. Furthermore, it should be considered that the declaration accepting the ICC's jurisdiction through Article 12(3) is by no means an automatic trigger of the Court's jurisdiction, but merely a precondition for the Court to exercise its jurisdiction¹⁹.

¹⁷ Further elaborated in ¶35–96 of this memo

¹⁸ Klamberg (2017), fn. 180

¹⁹ Schabas (2010), p. 289

17. An Article 12(3) declaration does not automatically trigger the Court’s jurisdiction over the “crime in question”, nor the activities of the Prosecutor²⁰. The PTC has supported this view by mentioning that a declaration made under Article 12(3) “cannot be equated with a referral²¹”. Instead, it merely serves as a precondition for the Court to exercise its jurisdiction by expressing said non-State Party’s consent²². Pursuant to Article 13(c) of RS, which is the trigger mechanism for Article 12(3), a case in an Article 12(3) declaration is to be treated as a *proprio motu* proceeding or “preliminary examination” of the Prosecutor pursuant to Article 15(1)²³.

18. On the other hand, pursuant to Article 14 of RS, State Parties may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation in a third State Party or a declaring State for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes. Such referrals are not restricted to States with a direct involvement in the situation²⁴.

19. *In casu*, a day after the IIM released its report, 38 State Parties to the ICC requested for the Prosecution to open an investigation into the Defendant’s crime in GL’s territory triggering the ICC’s jurisdiction under Article 13(a) and 14 of RS by means of a third-party referral. Through this, it is clear that besides having been granted jurisdiction through Giskar’s declaration accepting ICC’s exercise of jurisdiction under Article 12(3), the Court’s jurisdiction has also been triggered via the pathway exclusive to state parties to the referral.

20. The ICC Prosecutor has confirmed once in a statement that a state party’s referral with regards to a situation in a declaring state will positively affect the initially *proprio motu* investigations of the Prosecutor and is able to bypass the need for the Court’s authorization with respect to opening an investigation in said situation²⁵. The validity of this statement was proven after a subsequent statement made by the Prosecutor which stated that the Court had proceeded with active investigations after a total of 39 state parties have submitted referrals to the Court with regards to the declaring state’s situation²⁶.

²⁰ *Ibid.*, p. 55

²¹ Côte d’Ivoire (ICC-02/11-01/11-212), ¶57

²² Schabas (2010), p. 289

²³ LING Yan (2018), p. 452

²⁴ Klamberg (2017), fn. 180

²⁵ Prosecutor Statement (2022)

²⁶ Prosecutor Statement II (2022)

21. Presently, like the aforementioned precedent of the ICC, Giskar has filed a declaration under Article 12(3) accepting the Court's jurisdiction over crimes committed by the Defendant. Subsequently, 38 state parties to the RS have also requested the ICC Prosecutor to open an investigation into the CAH committed by the Defendant in Giskar's territory pursuant to Article 14 of the RS. Article 14 states that the situation referred must be within the jurisdiction of the Court, and as the Prosecution has established before, Giskar has both temporal and territorial jurisdiction with respect to the Defendant's alleged crime after lodging its Article 12(3) declaration. This would make Article 14 of the RS a valid trigger mechanism for the Court's exercise of jurisdiction.
22. Additionally, a high number of referrals can have a legitimizing effect. In the Rome Conference, there were several worries about State parties misusing their power to refer a case to the ICC by trying to send "frivolous or politically motivated referrals" to the ICC with respect to situations that took place in the territory of a political adversary²⁷. One of the options come up with at the time in order to prevent this was to only entitle groups of state parties to make referrals with regards to situations of another state²⁸, as a high number of State Party referrals might indicate that the motives for such referrals are not wholly political, and might indicate a great amount of concern for the situation referred to and support for the declaring or third state party.
23. Therefore, the Prosecution submits that as State Parties to RS have also referred to the Prosecutor for the opening of an investigation over the Defendant's alleged criminal act, the Court's exercise of jurisdiction over said crimes would be rightfully triggered through Article 14, in addition to Giskar's consent for exercise of jurisdiction through the declaration lodged under Article 12(3).

B. Article 34 of the VCLT Would not be a Hindrance to the ICC's Exercise of Jurisdiction to Regale

24. In accordance with Article 34 of the VCLT, treaties may not create obligations or rights for non-party states without its consent. With this in mind, non-Party States such as Regale, would not be bound to the ICC and its jurisdiction. Thus, the Court under normal circumstances would not have the right to enforce its adjudicative power unto the Defendant, a national of Regale.

²⁷ Scharf (2008) , p.328

²⁸ Arsajani, Reisman (2017), p.387

25. However, the Prosecution highlights that Article 34 VCLT may be exempted. In the Myanmar Case, the Court has observed that RS may have an effect on Non-Party States in particular situations²⁹. The Court noted that the application of certain provisions of RS may affect non-party states given the customary law character of certain principles or doctrine. This exception is in line with Article 38 of the VCLT which provides that treaties may become binding upon a third state through international custom as nothing from Article 34 to 37 of the VCLT, which deals with the rights and obligations of third parties, precludes it.
26. In the *Myanmar* case, the Court also highlighted the fact that as over 120 States have brought the ICC into being, the Court has international legal personality, and its existence is objective and concrete³⁰. In which case, the Court also noted that the nature of ICC's Preamble is rightfully *erga omnes* instead of being *inter partes*³¹. This fact therefore solidifies the Court's position as a legal-judicial-institutional entity that engages with a large number of states, including those who are not parties³².
27. Although it may seem unfair that Regale as a non-consenting State would be bound to Article 34 VCLT, the Prosecution considers that when crimes are committed in collusion with a State's government, said government is more likely to be reluctant to be bound to the ICC's jurisdiction over their nationals that are involved in the collusion³³. The ICC's power to have jurisdiction over non-consenting Nationality States serves as an answer to this problem³⁴.
28. Furthermore, as the IIM has reported, the main objectives behind the "OBA" were to induce the people of GL to secede from Giskar and join Regale, showing that the CAH committed by the Defendant contained political motives that would benefit Regale's Government. The Prosecution argues that it is also no coincidence that Regale conveniently determined that the Defendant had committed no wrongdoing and refused to cooperate with the Court on 20 May 2022³⁵. The Prosecution argues that considering the collusion between the Defendant and Regale's Government and context behind the alleged CAH committed by Defendant, it would only be appropriate if the Court had jurisdiction over the Defendant.

²⁹ Myanmar (ICC-RoC46(3)-01/18), ¶44

³⁰ *Ibid.* ¶48

³¹ *Ibid.* ¶38

³² *Ibid.* ¶48

³³ Morris (1999), p.364

³⁴ *Ibid.*

³⁵ Case ¶8

29. Moreover, it is known that the drafters of the RS intended for the ICC to have a relationship with the UN³⁶. Taking this into account, the Prosecution brings the UN Charter into consideration, an instrument that contains many fundamental principles that have become customary in character due to its widespread acceptance by a majority of countries in the international community.
30. Pursuant to Article 1 of the UN Charter, the UN seeks to maintain international peace and security. The Prosecution highlights that this purpose extends beyond maintaining peace and security within the UN community to include the entire international community as well³⁷. This then entails that the obligation to maintain international peace and security is applicable towards non UN members as well as Article 2 ¶6 of the UN Charter has stated that the UN must ensure that non-members also act in accordance with the Charter's leading principles to the extent necessary for the maintenance of international peace and security.
31. With regards to the obligation to maintain international peace and security, although what constitutes a threat to “international peace and security” is not defined in the Charter itself, scholars have defined said phrase as threats that cause death or lessen life chances on a large scale.³⁸ The concept of peace and security has also evolved into encompassing bad economic situations and environmental risks as well³⁹.
32. *In casu*, the Defendant’s alleged CAH caused the agro-based economy of GL to crash and the starvation and deaths of thousands in GL. The Prosecution argues that the devastating effects suffered by GL have shown sufficient grounds to believe that the Defendant’s biotechnology has the power to create an economic and humanitarian jeopardy, and that letting the Defendant go unpunished would go against the Court’s objective to deter grave crimes from happening again in the future⁴⁰.
33. In Conclusion, as there is a real threat towards maintaining international peace and security that has become customary in character and binding, the Government asserts that there may be an exception created to Article 34 with respect to this specific case.

³⁶ Myanmar (ICC-RoC46(3)-01/18), ¶43

³⁷ Verdross (1954), p.345

³⁸ Simma et al (2012), ¶10

³⁹ Soltani et al (2017), p.143

⁴⁰ Côte d'Ivoire (ICC-02/11-01/11-321), ¶83

II. THE PRE-TRIAL CHAMBER DID NOT ERR IN HOLDING SUBJECT MATTER JURISDICTION UNDER ARTICLE 7 (1) (K)

34. Defendant's commission as CEO of Karaxis Corp through "OBA" was implemented from March 2019 to September 2020, resulting in a number of casualties in GL that constituted a form of "ecocide" according to the IIM report. Defendant argues that "ecocide" should not be categorized under Article 7(1)(k), claiming that it violates the principle of legality as stated in Article 22 of the RS. In regards to this, the Prosecution asserts that the PTC did not err in holding the Defendant's act as a Crimes Against Humanity ("CAH") under Article 7(1)(k) as [A] the crime constitutes as "other inhumane acts" and [B] Defendant is individually responsible through joint commission under Article 25(3)(a).

A. Defendant's Commission Constituted as "Other Inhumane Acts" Under Article 7(1)(k) of RS

35. Defendant has implemented "OBA", an operation which was executed by spreading bioengineered insects through aerial release on Giskar's side of the Cascading River resulting in the destruction of 65% of GL's crops, quadrupled food prices, and 25,000 deaths from starvation and suicide. In this regard, the Prosecution argues that Defendant's commission as a crime of "ecocide" falls under Article 7(1)(k) as (i) the contextual elements of CAH are satisfied and (ii) the subjective and objective elements of CAH are satisfied.

i. The contextual elements of CAH are satisfied

36. Defendant's crime satisfied all contextual elements of CAH which are (1) the attack was part of widespread or systematic attack; and (2) directed against any civilian population.

1. The attack was part of widespread or systematic attack

37. *First*, according to the *Prlic* case, 'widespread' is defined as an attack that is conducted on a large scale and causes a high number of victims.⁴¹ Moreover, there is no precise numerical threshold for a case to be classified as 'large-scale',⁴² it must be analyzed on a case-by-case basis. However, according to *Kunarac* case an individual committing a crime against a single victim or a limited number of victims might be recognized as guilty of a crime against humanity if his acts were part of the specific context.⁴³ "OBA" caused massive destruction of crops, resulting in 20,000 civilian deaths due to starvation and 5,000 suicides. The crime was done through aerial release and affected a major part of GL, hence showing that the

⁴¹ Prlic (IT-04-74-T), ¶41

⁴² Brdanin (IT-99-36-A), ¶471

⁴³ Ibid, 2

Defendant's act is widespread. Although the operation caused massive damage to the crops of GL, Regale was virtually unharmed by the crime.

38. Hence, with the large scale and the number of victims that the operation produced, the Prosecution argues that the Defendant's crime fulfills the widespread element of CAH.
39. *Second*, another contextual element of CAH is 'a systematic attack'. According to the *Blaškić* case, the systematic element refers to 4 characters; the existence of a political objective, a plan pursuant to which the attack is perpetrated or an ideology to destroy, persecute or weaken a community, the perpetration of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another, the preparation and use of significant public or private resources, and the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan.⁴⁴ It is highly improbable for a systematic act to be a random occurrence, as the nature of the attack can "[...] often be expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis".⁴⁵
40. The Defendant's crime is highly influenced by the political objective of inducing GL to secede from Giskar and merge into Regale. As an SOE, Karaxis Corp and the Defendant as its CEO would participate in furthering the political objective. "OBA" and its subsequent consequences weakened GL' civilians' faith in their state, hence choosing to become independent and merging into Regale.
41. The *Ruto and Sang* case was characterized as widespread since it was massive and frequently conducted.⁴⁶ Herein, "OBA" follows a regular pattern of aerial release of bioengineered pests on Giskar's side of the Cascading River over the course of 18 months. The specific location and *modus operandi* indicates a precise identification of targets by the Defendant and involved private resources such as designer insects by Karaxis Corps shows Defendant commission was calculated. These patterns signify a non-accidental repetition on a regular basis throughout a long period of time to ensure optimum destruction, further indicating that "OBA" is a well-strategized systematic attack.

⁴⁴ *Blaškić* (IT-95-14-T), ¶ 203-204, 631.

⁴⁵ *Gbagbo and Goudé* (ICC-02/11-01/15-1251-Red), ¶ 223.

⁴⁶ *Ruto and Sang* ((ICC-01/09-01/11-2024)¶176

42. Furthermore, the Defendant's position as CEO in a company owned and controlled by Regale,⁴⁷ as well as the political objectives of OBA,⁴⁸ imply that there is significant political authority involved within the establishment and implementation of the crime.

43. Hence, OBA classifies as 'systematic' because it has fulfilled the requirements of being an organized attack following Giskar's policy with a regular pattern and involving substantial resources.⁴⁹

2. The attack was directed against civilian population

44. *Third*, a contextual element of CAH as stated in Article 7(1)(k) of the RS is "an attack directed against any civilian population". According to the *Muthaura* et al PTC, "[...] the Chamber notes that the qualifier 'any civilian population' has been previously interpreted to mean 'groups distinguishable by nationality, ethnicity or other distinguishing features'."⁵⁰ In the present case, the civilian population of GL is distinguishable by their nationality, as nationals of Giskar who live in Giskar's semi-autonomous region of GL.

45. As shown in the *Kunarac* case, factors used to determine whether a case fulfills such an element include but are not limited to "the number of victims, the means and methods used, the nature of the crimes committed..."⁵¹ The staggering casualties of 25,000 civilians caused by starvation and stress pushed a plebiscite that eventually caused GL to secede itself from Giskar to obtain protection in the form of the plant toxins only provided by Regale.

46. According to judge Chile Eboe-Osuji, it is critical to prove the intent of attack towards civilians rather than limiting the element to verify the civilians as a primary target, as such a limitation could lead to a miscarriage of justice.⁵² Hence, instead of overly focusing on whether or not civilians were the *primary* target of the attack, it is more important to find out whether or not civilians were the *intended* target of the attack. The Defendant's intent to attack the civilians of GL through "OBA" is proven *infra*.⁵³

47. As stated in Article 7(2), the RS requires an 'attack directed against any civilian population' to be qualified as CAH as 'a course of conduct involving the multiple commission of those

⁴⁷ Case, ¶3

⁴⁸ IIM Report, ¶6

⁴⁹ Ndindiliyimana (ICTR-00-56-A) ¶¶260, 262

⁵⁰ Muthaura, Kenyatta and Ali (ICC-01/09-02/11), ¶110.

⁵¹ Kunarac Trial Chamber (IT-96-23/1-T), ¶91.

⁵² Eboe-Osuji (2008), p122-124

⁵³ Memo, ¶¶73-96

acts'. "OBA" was conducted repeatedly over the course of 18 months on Giskar's side of the Cascading River, hence satisfying the requirement set in Article 7(2) of the RS.

48. "OBA" is a meticulously planned attack directed by the Defendant. The method, manner, location, and duration of "OBA" show that it is an organized crime instead of a spontaneous or isolated attack. Instead, Regale secretly funded an independence movement in GL when the civilians were becoming more disappointed in Giskar's helplessness.⁵⁴ In the end, Karaxis Corp succeeded its goal of pushing GL to secede from Giskar and merge with Regale. Hence, "OBA" fulfills the policy requirement and is classified as CAH.

49. Thus, the Prosecution argues that the Defendant's crime satisfies the contextual elements of CAH and falls under Article 7(1)(k) "other inhumane acts" of the RS.

ii. The subjective and objective elements of CAH are satisfied

2. The subjective elements are satisfied

50. Pursuant to Article 7(1)(k) of RS, there are three subjective elements that need to be satisfied.⁵⁵ First, the perpetrator of CAH must intend to "inflict great suffering or serious injury to body or mental or physical health." Second, the perpetrator must be aware of the factual circumstances establishing the character of the act, with 'character' being defined as the nature and gravity of the act. Third, the perpetrator was aware of or intended for the conduct to be part of a widespread and systematic attack directed against any civilian population.

51. *First*, Defendant intended to inflict serious injury to body or mental or physical health. According to Article 30(2)(b) of the RS, a person has intent when he/she means to cause the consequence or is aware that it will occur in the ordinary course of events. This awareness regarding foreseeable occurrences is standardized as 'virtual certainty' since absolute certainty of the future is impossible.⁵⁶ *Tolimir Zdravko* AJ adds, "...Drawing on the case law of the ICTY and the ICTR, the TC held that serious bodily or mental harm: must be of such a serious nature as to contribute or tend to contribute to the destruction of all or part of the group; although it need not be permanent or irreversible, it must go "beyond temporary

⁵⁴ *Ibid*, ¶7

⁵⁵ EOC, Article 7(1)(k)

⁵⁶ Lubanga (ICC-01/04-01/06 A 5), ¶447.

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unhappiness, embarrassment or humiliation” and inflict “grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.”⁵⁷

52. In the act of crippling GL’s farming industry through the aerial release of bioengineered insects, it is foreseeable and inevitable that agro-based GL will fall into economic crisis. As a result of the crisis, domestic food prices quadrupled throughout “OBA”, causing mass starvation. The famine unleashed in GL caused great suffering indicating serious injury to the body.
53. Even if the starvation in GL is not classified as famine, the connection between violations economic and social rights as well as crimes against humanity concludes that “right to food violations that do not amount to famine but cause widespread death and suffering should be criminalized as CAH, assuming other requisite elements have been met.”⁵⁸
54. Other cases have classified starvation as a serious injury of mental health which resulted in a conviction for CAH. In the case of *Nuon Chea*, the actions of depriving the civilian population of adequate food, were found to inflict serious mental and physical suffering and injury and to constitute a serious attack on human dignity of a similar gravity to other crimes against humanity.⁵⁹ All these grievous occurrences were foreseeable and inevitable consequences of the Defendant’s crimes.
55. As long as the perpetrator’s actions and mental state are sufficient, the amount of time elapsed between starvation and death is irrelevant.⁶⁰ It is undeniable that their *cause* of death is related to the defendant’s operation, Hence, deaths caused by starvation classify as CAH.
56. The GL civilians went through 18 months of “OBA” and chronic malnutrition prevented them from leading a normal and constructive life. Hence, this has gone far beyond “temporary unhappiness, embarrassment, or humiliation” and inflicted grievous disadvantages to those who committed suicide and who died of starvation, since they were no longer able to lead a life at all.

⁵⁷ Tolimir (IT-05-88/2-A), ¶201.

⁵⁸ Kearney (2010), p 255, 258

⁵⁹ Case 002, Closing Order, Doc. No. D427, ¶1435 (15 September 2010) (Office of the Co-Investigating Judges, ECCC).

⁶⁰ *Ibid*, p. 257-258.

57. *Second*, the Defendant was aware of the factual circumstances establishing the character of his attacks. Article 30(3) of the RS states that ‘knowledge’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.⁶¹
58. *Third*, the Defendant was aware that his attacks were part of a widespread and systematic attack directed against a civilian population. The Defendant as Karaxis Corp’s CEO is a key character in the conception and implementation of OBA towards GL in an effort to induce a secession.
59. The IIM Report alleges that this crisis and subsequent consequences are exactly what the Defendant anticipated, since the Defendant was well aware of GL’s agricultural prosperity and planned that through the destruction brought by “OBA”, GL would feel dissatisfied with Giskar’s helplessness in aiding them, thus promoting the secession. Furthermore, the Defendant implemented “OBA” for the significant duration of 18 months from March 2019 to September 2020, hence solidifying that the Defendant intended to inflict serious injury to body or physical and mental health.
60. Hence, the Defendant satisfies all three subjective requirements of Crimes Against Humanity under Article 7(1)(k) of the RS.

2. The objective elements are satisfied

61. The Prosecution firmly asserts that Article 7(1)(k) of RS serves as a residual article to facilitate the prosecution of unprecedented actions that fall against “crimes against humanity”.⁶² “Other inhumane acts” in Article 7(1)(k) is inherently non-exhaustive due to the simple and ordinary meaning of the word “other” which justifies an extension of what is defined as inhumane acts. Hence, instead of the ambiguous definition that is stated in Article 22(2) regarding the principle of legality, the Prosecution argues that the wording of Article 7(1)(k) is deliberately chosen in order to prevent impunity. Bearing in mind that human beings’ capacity for committing crime is constantly developing, the law must ensure that no unprecedented action can evade justice through overly strict interpretation of statutes.⁶³

⁶¹ RS, Article 30(3)

⁶² *Kupreskic et. al*, Judgement, Part V, ¶563

⁶³ McCormack, McGoldrick, Rowe, Donnelly (2004), p.201

62. In addition, Article 22(1) of the RS states that a person shall not be held criminally responsible under this statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the court.
63. Although ecocide is not stated specifically in Article 7 of the RS, the nature of article 7(1)(k) that uses the general term “other”, has a broad scope and functions as a residual article. Thus, although it is not stated specifically, ecocide is categorized under CAH, hence ecocide is under the jurisdiction of the ICC as required in Article 22 of RS.
64. The Independent Expert Panel for the Legal Definition of Ecocide defines ecocide as “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”⁶⁴
65. In addition to expert panels, states around the world have also acknowledged and criminalized ecocide in their national jurisdictions. Ten countries have included ecocide as a punishable crime in their penal code, including Vietnam, Uzbekistan,⁶⁵ Tajikistan,⁶⁶ Russian Federation,⁶⁷ Republic of Moldova,⁶⁸ Kyrgyzstan,⁶⁹ Kazakhstan.⁷⁰ Vietnam’s penal code describes ecocide as “acts of annihilating en-mass population in an area, destroying the source of their livelihood, undermining the cultural and spiritual life of a country, upsetting the foundation of a society with a view to undermining such society, as well as other acts of genocide or acts of ecocide or destroying the natural environment...”⁷¹
66. Pursuant to ICC’s Policy Paper on Case Selection and Prioritization, the OTP will prioritize RS crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.⁷²

⁶⁴Legal Definition of Ecocide (2021)

⁶⁵ Criminal Code of Uzbekistan, art. 196 (1994).

⁶⁶ Criminal Code Tajikistan, art. 400 (1998).

⁶⁷ Criminal Code Russian Federation, art. 358 (1996).

⁶⁸ Penal Code Republic of Moldova, art. 136 (2002).

⁶⁹ Penal Code Kyrgyzstan, art. 342 (1997).

⁷⁰ Criminal Code of the Republic of Kazakhstan, art. 161 (1997).

⁷¹ Penal Code Vietnam, Ch. 5, art. 342 (1990).

⁷² Policy paper on case selection and prioritization (2016).

67. According to the ICJ Judge Weeramantry during the case of *Gabcikovo-Nagymaros* Project, customary laws concerns have evolved, it now concerns and protects the greater interest of planetary welfare. Thus, international environmental law is not limited to the individual state interest. Hence, ecocide is considered as breaking customary law.⁷³
68. As a UN member after its secession from Regale in 2002, it is within reason to believe that Giskar has ratified UN treaties. According to the Universal Declaration on the Eradication of Hunger and Malnutrition, “every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.”⁷⁴ In addition, both the UDHR⁷⁵ and the ICESR⁷⁶ both emphasize the right to food. These support that starvation is a violation of human rights as it damages every human being’s mental and physical health. As the starvation occurred in GL when it was still part of Giskar, the Defendant’s “OBA” has violated this inalienable right.
69. Even if Giskar has yet to ratify the aforementioned treaties, grave violations of human rights, including the right to food, can be prosecuted through international criminal court. “When these violations are widespread or systematic, satisfy the requisite *mens rea* standard, and are perpetrated in accordance with a state or organizational policy, they may constitute a crime against humanity that invokes international criminal responsibility.”⁷⁷

B. Defendant is individually responsible through joint commission under Article 25(3)(a)

i. Actus reus

70. Under the authority of the Defendant as CEO of Karaxis Corp, the company has secretly bred genetically modified insects to be highly vulnerable to its Bt protein but to be resistant to conventional pesticides. According to information given by Kristen Kole to the IIM, the Defendant is allegedly behind the conception and implementation of “OBA”. Thus it has led the Prosecution to believe that The Defendant is the catalyst for “OBA”.
71. On the 20th of April 2022, IIM had issued its first report in which the information collected by the IIM has pointed out that OBA is a secret operation that was conducted solely by Karaxis Corp. The IIM Report alleges that the secret operation was committed by both The

⁷³ Slovakia (No.92)

⁷⁴ Declaration on the Eradication of Hunger and Malnutrition (1973), ¶1.

⁷⁵ UDHR (2021), G.A. Res. 217 (III) A, art. 25, U.N. Doc.A/Res/217(III) (1948).

⁷⁶ Covenant on Ecosoc (1966), ¶1

⁷⁷ Kearney (2010),55 p 2, 258

Defendant and other nationals of Regale in the territory of Giskar since March 2019. Thus, the charges against The Defendant are also charged with the mode of liability as a ‘joint commission’.

72. According to the *Monsanto* case, both corporations and individuals from certain positions can be directly held liable for the crimes committed.⁷⁸ Article 25(3)(a) states that a person can be held criminally responsible if they commit such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible.
73. The Tadić AC judgment further clarifies JCE, particularly JCE I and JCE III. JCE I imposes criminal responsibility on all participants in the JCE for crimes committed pursuant to the common purpose although only some participants physically perpetrate the crime.⁷⁹ In *Brima et al.*, the common criminal purpose in JCE I can be expressly criminal or it can amount to or involve the commission of crimes as written in the RS.⁸⁰ JCE III is an extended form of JCE I, in which “the so-called ‘extended’ joint enterprise where one of the co-perpetrators actually engages in acts going beyond the common plan but his or her acts still constitute a ‘natural and foreseeable consequence’ of the realization of the plan”.⁸¹
74. According to the The Trial Chamber in Blagojević and Jokić, there are three *actus reus* of a JCE participant. First, a plurality of persons is required, which need not be organized in a military, political, or administrative structure. Second, there is the existence of a common purpose which amounts to or involves the commission of a crime which does not have to be previously formulated. Third, the accused must have participated in the perpetration of the crime. This participation need not involve commission of a specific crime under one of the provisions in RS but may take the form of assistance in, or contribution to, the execution of the common purpose.⁸²
75. *First*, Karaxis Corps. is an administrative structure consisting of a plurality of persons headed by the Defendant, who is the President/CEO of the corporation. Moreover, the government of Regale which is a body that consists of a plurality of persons. Together, the

⁷⁸ International Monsanto Tribunal in The Hague (2016).

⁷⁹ Cassese (2013), p. 164

⁸⁰ *Brima* (SCSL-2004-16-A), ¶¶76-80.

⁸¹ Tadić Appeals (IT-94-1-A); Tadić Appeals (IT-94-1-T)

⁸² Kvočka et al. (IT-98-30/1-A), ¶96; Vasiljević Appeals (IT-98-32-A), ¶100

parties had orchestrated the common plan of the “OBA”. Thus the crimes committed under CAS are conducted jointly, which is in accordance with article 25(3)(a) and Tadić.

76. The primary objectives of “OBA” are to suppress GL’s farm output and induce GL into seceding from Giskar and merging into Regale. These objectives are highly political and economic in motivation. As “OBA” was conceptualized by the Defendant and benefits the nationals of Regale, these objectives serve as their common purpose. Although the *purpose* of “OBA” does not expressly constitute a crime, the method of pushing the succession was conducted in a way that destroyed 65% crops that is GL’s source of livelihood and resulted in the deaths of 25,000 civilians. Thus, the Defendant alongside Nationals of Regale are deemed to be liable under the mode of liability JCE I.
77. Furthermore, the OBA succeeded in their goals to push the secession of the citizens of GL from Giskar as it is reported that there has been devastating effects on the region's corn, potato and cotton crops. This led to the foreseeable death of 25,000. Although this is not a part of the common design of “OBA”, it nonetheless was an inevitable and foreseeable consequence, thus categorizing the mode of liability under JCE III.
78. Furthermore, according to the *Katanga* TJ, ‘control over the crime’ amounted to ‘control over the organization’.⁸³ The Defendant had the most control, as the CEO of Karasix Corp. this is also solidified by the IIM reports findings that stated The Defendant conducted the planning for operation OBA.
79. The IIM’s report alleges that the “OBA” was conceived and implemented by the Defendant and that the Defendant was aware of the inevitable consequences of “OBA”. The Defendant’s *actus reus* is present under the fact that the Defendant had knowledge, authority and control over the operation and executed “OBA”, which caused a great number of destruction and casualties in GL.
80. In contrast, the destructive results of “OBA” in GL prove to be beneficial for Regale and the Defendant.

⁸³ Katanga Trial Judgment (ICC-01/04-01/07)¶¶1403-1405

ii. Mens rea

81. The Defendant's objectives show that *he* has knowledge and intent regarding the crime. Pursuant to the IIM's report, the Defendant's motives behind OBA are highly driven by politics and profit. The Defendant's act of suppressing farm output, which in turn caused an economic crisis for the agro-based GL, resulted in a total of 25,000 deaths in GL. However, the Defense argues that the Defendant's operation targeted crops instead of humans and ecocide should not be classified as CAH.
82. The element of 'intent' and 'knowledge' of the Defendant is not directly obvious. However, these elements can be identified throughout the result of the attack as well as the method of attack.
83. According to the judgment of the *Kunarac* case, "...In order to determine whether the attack may be said to have been so directed, the TC will consider *inter alia*, the means, and the method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course."⁸⁴ Hence to determine whether the element of *mens rea* was present during the conduct of "OBA", the previous factors above will be analyzed.
84. In accordance with Article 30, it is stated that a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction with 'intent' and 'knowledge'. Article 30(1) explains that a person has intent if that person means to engage in the conduct and means to cause or is aware of the consequences that will occur in the ordinary course of events.
85. The legal requirement of *mens rea* in JCE III requires that it was foreseeable to the accused that such a crime might be committed by a member of the JCE or one or more of the persons used by the accused in order to carry out the *actus reus* of the crimes forming part of the common purpose⁸⁵ and the accused willingly took the risk that such a crime might occur by joining or continuing to participate in the enterprise.⁸⁶

⁸⁴ Kunarac Appeals (IT-96-23/1-A);Kunarac Trial Chamber (IT-96-23/1-T),¶91.

⁸⁵ Brđanin Appeal Judgement, ¶¶365, 411.

⁸⁶ Kvočka et al. (IT-98-30/1-A), ¶ 83; Tadić Appeals (IT-94-1-A) ¶¶204, 220, 228; Vasiljević Appeals (IT-98-32-A), ¶99

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86. Pursuant to Article 30 of RS, a crucial element of mens rea is intent. The Defendant played a pivotal role in the propagation of the “OBA”. As CEO, the Defendant has knowledge and authority over the projects in the corporation, including the designer insects that are resistant to pesticide but vulnerable to Karaxis Corp’s patented pest-resistant seeds/crops only. Instead of stopping the operation, the Defendant furthered the conception and implementation of “OBA” towards GL, in pursuit of their common design to force the civilians of GL to move to Regale.
87. Furthermore, The Defendant released the insects at the borders of GL and Regale, where the release of bugs did not virtually harm Regale’s crops, while in contrast devastatingly destroyed 65% of crops in GL. The release of the bugs was strategically carried out in the Cascading River, as The Defendant knows that the crops of Regale would be protected by the mountain range bordering Regale, hence is isolated from the released insects.
88. During “OBA”, GL was a part of Giskar, which is a developing state whose economy is heavily reliant on farming and agricultural products. With these in mind, the Prosecution argues that by destroying the crops of GL, the Defendant has ravaged a significant supply of the world’s agricultural products, let alone GL’s domestic food supply. Hence, the Defendant’s operation fully intends to destroy the crops as a method to grievously injure the civilians of GL through starvation and death in order to further their national interest of instigating GL’ secession.
89. Notably, the aerial release was also conducted in a span for more than a year and was conducted repeatedly. The timing of the operation is purposely conducted to upbring high levels of damages towards GL crops. Thus, the shortage of crops causes domestic food prices to quadruple, which ultimately cripples Giskar’s economy, and forces it to become dependent towards Regale.
90. This was proven during the merger agreement between Regale and GL on 15 May 2021, which states Regale will receive 10% of all export profits via tax from GL, and they shall provide pest-resistant seeds/crops to the farms of GL. Thus, this parallelly confirms the knowledge and intent of Regale that through “OBA”, they are able to forcefully gain the profits of GL that they could never obtain on their own.

91. Karaxis Corp. developed the bioengineered insects in secret and did not share the pest-resistant seeds/crops tech with Giskar prior to May 2021. These actions show that there is intent to withhold information for securing the success of the operation with all its consequences towards GL. Since Karaxis Corp knows that they are the only entity that withholds the repellent towards the insects, they also acknowledged the consequences of doing such acts and the benefit they would gain. Therefore, the Defendant is well aware of the massive destruction that the operation would inevitably cause. Hence, the Defendant satisfies both the *mens rea* requirement; intent and knowledge.

III. THE PTC DID NOT ERR IN HOLDING THE CRIME BASED ON THE SOLE REPORT OF THE IIM

66. The Prosecution respectfully submits that the PTC did not err in holding the crime based on the sole report of the IIM whereas firstly, **[A]** the legitimacy of the IIM Report is acceptable as the establishment of IIM is not *ultra vires*, and secondly, **[B]** The IIM Report is sufficient to establish substantial grounds to believe as pursuant to Article 61(7).

A. The Legitimacy of the IIM Report is acceptable as the establishment of IIM is not *ultra-vires*

67. The legitimacy of the IIM Report was challenged by OLA. However, the Prosecution sees that the IIM Report is still legitimate enough as **[i]** The exception of mandate as set forth by GA Resolution 377(V) and UNGA Resolution ES-11/2, **[ii]** The IIM Report holds sufficient probative value and relevance requirement as stipulated under Article 69(4) of RS.

68. The IIM Report was released by the IIM which was an organization established through Resolution ES-11/2 by the UNGA. The IIM was mandated to collect and analyze evidence of violations of international criminal law, and to prepare case files and draft indictments for prosecution before the International Criminal Court. However, the legitimacy of the report as evidence is challenged by the OLA as the creation of IIM itself is considered as *ultra vires* act outside of the UNGA mandate.

- i. The exception of mandate as set forth by GA Resolution 377(V) and UNGA Resolution ES-11/2

69. The UNSC resolution to create an investigative mechanism itself was vetoed by the permanent member that is an ally to Regale. As pursuant to Article 29 of the UN Charter,

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UNSC is allowed to establish a subsidiary organ in performing its function. However, Section A of GA Resolution 377(V) explicitly stated that if the UNSC lacks unanimity of the permanent members and fails to exercise its mandate to keep international peace and security, the UNGA is allowed to make recommendations towards the State members to maintain such conditions. Previously, the resolution has been exercised multiple times for the situation in the Middle East, the question in Palestine, and etc. Furthermore, the resolution that established the IIM was supported by 130 State members. Therefore under GA Resolution 377(V), it was not *ultra vires* of UNGA to create IIM in order to maintain international peace when UNSC has failed.

70. The root problem of the illegitimacy of the report lies in the establishment of IIM itself that is deemed to be *ultra vires*, therefore it is important to highlight the mandates each UNGA and UNSC hold. In this sense, the establishment of IIM for Syria can be a precedent. In addressing accountability issues in Syria, the UNSC was paralyzed by the constant veto of draft resolutions by China and Russia⁸⁷ making it impossible to create an international tribunal to investigate and prosecute crimes in Syria. This is a highly similar situation to the UNSC Resolution to create an investigative mechanism over crimes committed in Giskar that was vetoed. Finally the UNGA established the IIM for Syria under Article 10 and Article 22 of the UN Charter through GA Resolution 71/248 on 21 December 2016. Relating to this case, the Prosecution sees that the same articles can also apply *in casu* considering the very similar situation of the establishment of both IIM for Syria and IIM. Therefore, the establishment of IIM including the acceptance of its report as a piece of evidence in the case at hand is lawful and legitimate as the establishment of an investigative mechanism by the UNGA has been done previously.

71. As a member of the UN since 2002, Giskar under Article 34 and 35 of the UN Charter, can have the crime conducted in GL to be investigated by the UNSC. This is due to the nature of crime that may cause an increase of international tension and obstruct the international peace and security the UN aims to protect. Article 35 of the UN Charter specifically provided that Giskar as a UN Member is allowed to bring the crime conducted in GL into the attention of UNSC and UNGA. Therefore, Giskar's request to the UNSC to create an investigative mechanism is lawful.

⁸⁷ Identical Letters from Palestine (A/E-10/628-S/2014/347)

72. The failure of UNSC to establish IIM made Giskar to eventually request UNGA by itself to create the investigative mechanism. Such an act is lawful under the GA Resolution 377(V) following the procedures in Chapter VI of the UN Charter. Article 35 of the UN Charter explicitly set forth that any member of the UN is allowed to bring any dispute that endangers international peace to the UNSC or the UNGA. Hence Giskar's request to UNGA is acceptable.
73. Bearing in mind that the UNGA has mandates through UN Charter and GA Resolution 377(V), and that the request of Giskar to UNGA is not prohibited, it can be irrefutably concluded that the establishment of IIM is appropriate and not beyond the authority of UNGA. Furthermore, it must be noted that the Resolution ES-11/2 establishing the IIM is voted in favor by 130 States, passing the quorum of two-thirds majority as pursuant to Rule 83 of Rules of Procedure of the General Assembly⁸⁸. Therefore, passing of resolution to establish IIM was as per the procedure.
74. OLA challenged the establishment of the IIM, deeming it as *ultra vires*. The definition of *ultra vires* itself simply is "beyond powers" in which authorization is done beyond the scope of power granted to the person.⁸⁹ However, the establishment of IIM is absolutely not beyond the power of UNGA. Therefore, the establishment of IIM is legitimate and its report should be utilized as a piece of evidence to establish substantial grounds *in casu*.
- ii. The IIM Report holds sufficient probative value and relevance requirement as stipulated under Article 69(4) of RS
75. The IIM Report as a piece of evidence to exist *in casu* should undergo admissibility test as pursuant to Article 69(4) of RS. The test consists of satisfying the probative value and relevance requirement. Through this test, not only it proves that the IIM Report is admissible to be regarded as evidence, additionally it will elaborate how it is sufficient as a single evidence.
76. In order to ensure a fair trial and the integrity of the Court, presented evidence should satisfy the probative value. In assessing probative value, it is important to examine its weight which constitutes the qualitative assessment of evidence.⁹⁰ In determining the probative value of evidence, the Court will assess how the evidence was obtained.⁹¹ The information in the IIM

⁸⁸ Rules of Procedures of the General Assembly, Rule 83

⁸⁹ Law Dictionary (2009), p. 1662

⁹⁰ Bemba, (ICC-01/05-01/08-424), ¶42

⁹¹ Bemba, (ICC-01/05-01/08-3343), ¶238

Report was given by Kole through Giskar to the IIM under its obligation in ES-11/2. The IIM deemed that all of the documents provided by Kole through Giskar were authentic.

77. Authenticity of the document further contributes to the probative value of evidence by giving weight into the reliability of it.⁹² In *prima facie*, the information provided in the IIM Report is determined authentic by the IIM, therefore the report wholly is authentic. In addition, the report contributes as a UN Document which the Prosecutor obtained directly from the IIM itself. The referral of the case was also by 38 States Party to the RS referring the case to the Prosecutor after the release of IIM Report. This itself puts weight on the trustworthiness of the report. Hence, the probative value of evidence is sufficient.

78. The nexus between a piece of evidence and the adjudicated case is how relevance value is determined. It is relevant if it can significantly make a factual proposition more probable and less probable.⁹³ Relevance is judged based on the extent to which it is rationally linked to the fact in question.⁹⁴ The IIM Report without doubt holds relevance towards this case. The report has elaborated how the Defendant conducted his crime and is able to explain how this Court holds jurisdiction. Therefore its relevance to the case at hand is present.

79. Minding that the probative value and relevance of evidence have been proven, the Court must deem the evidence as admissible. The IIM Report has passed the admissibility test under Article 69(4). The admissible evidence shall give enough basis for the Court to continue the prosecution against the Defendant.

B. The IIM Report is sufficient to establish substantial grounds to believe as pursuant to Article 61(7)

80. The IIM Report as a sole evidence *in casu* was deemed insufficient. This is as it is the only evidence to exist and furthermore, its legitimacy is being challenged as well by the OLA that opined the creation of IIM and its report is *ultra vires*.

81. The low evidentiary standard is due to the PTC mandate itself which is to assess at the moment they hear the case, whether there is sufficient evidence to establish substantial grounds to believe that the suspect committed each of the crimes charged.⁹⁵ Therefore in submitting evidence, the Prosecution does not need to present more than necessary as the

⁹² *Katanga* (ICC-01/04-01/07), ¶¶21-22

⁹³ *Idem*, ¶16

⁹⁴ *Bemba, Loc.cit* ¶41

⁹⁵ Marinello (2015), p. 586

PTC does not need to be convinced beyond a reasonable doubt.⁹⁶ The standard of evidentiary to be met in this stage of investigation is low, the Prosecution does not need to submit more evidence to meet the threshold of ‘substantial grounds to believe’.⁹⁷ In defining ‘Substantial grounds’, the *Bemba* case defined it as ‘significant’ or ‘solid’.⁹⁸ Furthermore, in order to meet the evidentiary standard, a concrete and tangible proof to demonstrate reasons for specific allegations should also be presented.⁹⁹ Therefore, ‘low evidentiary standard’ is evidence that could give information on whether a crime has or is taking place and the reason behind it.

83. In casu, the only evidence presented is the IIM Report, which its significance can be proven easily. Significance as held by *Katanga* case is interpreted as how evidence can influence the Court’s decision, which one of them is that the evidence may help the Court to reach a conclusion on the existence or non-existence of a material fact.¹⁰⁰ Regarding the evidence at hand, the information gathered were all substantial and able to be utilized in reaching a conclusion and to continue to the next proceedings. Therefore it is effortlessly proven significant *in casu*, hence fulfilling the set threshold.

84. This Court’s precedents also held that the probative value of evidence weighs more than the amount of presented evidence itself in confirming the charges against the Defendant.¹⁰¹ In short, the evidentiary matter in PTC is regarding quality over quantity. The probative value has been elaborated to be sufficient and made the report to be admissible, therefore the IIM Report as a single evidence is enough to sustain a future conviction. In addition, the Prosecution may rely on documentary or summary evidence and need not more than that in this proceeding.¹⁰²

85. The IIM Report is made in the interest of justice, just as how the IIM itself is established and mandated by the UNGA. No reason other than maintaining international peace and justice would base the creation of such an extensive report on the Defendant’s conduct. This is inline with the Court’s purpose as stated in the preamble of RS which is to guarantee lasting respect for and the enforcement of international justice. Therefore, dismissing the report would be an obstruction to justice.

⁹⁶ *Klamberg* (2017), fn. 497.

⁹⁷ *Mbarushimana* (ICC-01/04-01/10-514), ¶47

⁹⁸ *Bemba* (ICC-01/05-01/08-424), ¶29

⁹⁹ *Klamberg* (2017), fn. 495

¹⁰⁰ *Katanga* (ICC-01/04-01/07-2635), ¶34

¹⁰¹ *Bemba* (ICC-01/05-01/08-3343), ¶60

¹⁰² RS Article 61(5)

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86. The relevance and significance of the IIM Report relating to the case at hand is highly apparent. The report is able to provide the Court with information regarding the conduct, the crime, and the reason behind it. Moreover, the Report clearly gives information on who the perpetrator is. This satisfies the requirement of “tangible proof to demonstrate reasons for specific allegations.”
87. The OTP affirms that the Court should utilize the IIM Report as evidence on the grounds that it passes the admissibility test and that single evidence is sufficient to sustain charges against the Defendant in the interest of justice and to fight impunity as held by the preamble of RS itself.

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SUBMISSIONS

On the basis of the issues and arguments set forth in this memorial, the Prosecution hereby respectfully requests the AC to:

1. **Dismiss** the PTC VI's Decision, and

2. **Declare** that:
 - a. The PTC did not err in accepting Giskar's jurisdiction under Article 12(3) over the crimes committed by the Defendant in GL, and that
 - b. The PTC did not err in holding subject-matter jurisdiction under Article 7(1)(k)
 - c. The PTC did not err in holding the crime based on the sole report of the International Investigative commission for Giskar

Respectfully submitted,

Office of The Prosecutor

Dated 6th of March 2023.

