IBA ICC MOOT COURT COMPETITION IN THE ENGLISH LANGUAGE

PROSECUTION COUNSEL

Team number: 92

Year: 2024

Total Word Count: 9,638

Cour
Pénale
Internationale

International
Criminal
Court

Original: **English** Date: 17 March 2024

THE APPEALS CHAMBER

Case before the International Criminal Court (ICC):
The Prosecutor v. Lionel Strong
Situation in the Republic of Sirax

The Office of the Prosecutor's Submission in the Appeal from the Pre-Trial Chamber's Decision on Denial of Charges against Defendant Lionel Strong of The Republic of Sirax

TABLE OF CONTENTS

LIST OF ABREVIATIONS

AC	Appeals Chamber
Art./Arts.	Article(s)
Dr	Doctor
ECCC	Extraordinary Chambers in the Courts of Cambodia
EoC	Elements of Crimes
Fn.	Footnote number(s)
GC	Geneva Convention
Ibid.	*Ibidem* (in the same place)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International humanitarian law
KP	Karaxis Party

Mr	Mister
NIAC	Non-international armed conflict
OAG	Organised Armed Group
OTP	Office of the Prosecutor
p.	Page
pp.	Pages
PM	Prime Minister
PTC	Pre-Trial Chamber
RPE	Rules of Procedure and Evidence
RS/the Statute	Rome Statute of the International Criminal Court
Sirax	Republic of Sirax
TC	Trial Chamber
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UDHR	Universal Declaration of Human Rights
v.	Versus
VCLT	1969 Vienna Convention on the Law of Treaties

INDEX OF AUTHORITIES

TREATIES

ICC DOCUMENTS

10. Policy on the Crime of Gender Persecution, December 2022, The Office of the Prosecutor, <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf> accessed 1 March 2024 [**OTP Policy on Gender Persecution**].

11. Policy on Cultural Heritage, June 2021, The Office of the Prosecutor, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf> accessed 15 February 2024 **[OTP Policy on Cultural Heritage]**.

12. Policy Paper on Preliminary Examinations, November 2013, The Office of the Prosecutor, <http://www.legal-tools.org/doc/acb906/> accessed 15 February 2024 **[PEs Policy]**.

13. Rules of Procedure and Evidence, 2019, ICC-PIOS-LT-03-004/19_Eng **[RPE]**.

CASES

Extraordinary Chambers for the Courts of Cambodia

14. *Prosecutor v Ieng Sary* (Decision on accused Ieng Sary's fitness to stand trial) 002/19-09-2007/ECCC/TC (26 November 2012) **[*Sary* Fitness Decision]**.

15. *Prosecutor v. Ieng Thirith* (Decision on Ieng Thirith's fitness to stand trial) 002/19-09-2007/ECCC/TC(E138) (17 November 2011) **[*Thirith* Fitness Decision]**.

16. *Prosecutor v. Ieng Thirith* (Decision on reassessment of accused Ieng Thirith's fitness to stand trial following Supreme Court Chamber decision of 13 December 2011) 002/19-09-2007/ECCC/TC(E138/1/10) (13 September 2012) **[*Thirith* Reassessment Decision]**.

East Timor Dili District Court

17. *Deputy General Prosecutor for Serious Crimes v. Josep Nahak* (Findings and order on defendant's Nahak's competence to stand trial) 01A/2004 (1 March 2005) **[*Nahak* Competence]**.

18. *Prosecutor v. Abdel Kani* (Decision Appointing Experts for the Purpose of a Medical Examination pursuant to Rule 135 of the Rules of Procedure and Evidence) ICC-01/14-01/21-630-Red (24 August 2023) **[*Abdel Kani* Experts Decision]**.

19. *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (Decision appointing experts for the purpose of a medical examination pursuant to Rule 135 of the Rules of Procedure and Evidence) ICC-01/12-01/18-1006-Red (24 March 2021) **[*Al Hassan* Experts Decision]**.

20. *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (Decision on Mr Al Hassan's ongoing fitness to stand trial) ICC-01/12-01/18-1467 (10 May 2021) **[*Al Hassan* Fitness Decision]**.

21. *Prosecutor v. Ahmad Al Faqi Al Mahdi* (Reparations Order) ICC-01/12-01/15-236 (17 August 2017) **[*Al Mahdi* Reparations]**.

22. *Prosecutor v. Ahmad Al Faqi Al Mahdi* (Judgment and Sentence) ICC-01/12-01/15-171 (27 September 2017) **[*Al Mahdi* Judgment]**.

23. *Prosecutor v. Jean-Pierre Bemba Gombo* (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo) ICC-01/05-01/08-424 (15 June 2009) **[*Bemba* Charges Decision]**

24. *Prosecutor v. Jean-Pierre Bemba Gombo* (Judgment pursuant to Article 74 of the Statute) ICC-01/05-01/08-3343 (21 March 2016) **[*Bemba* Judgment]**.

25. *Prosecutor v. Charles Blé Goudé* (Decision on the confirmation of charges against Charles Blé Goudé) ICC-02/11-02/11-186 (11 December 2014) **[*Blé Goudé* Charges Decision]**.

26. *Situation in the Republic of Burundi* (Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi") ICC-01/17-9-Red (09 November 2017) **[*Burundi* Art. 15 Decision]**.

27. *Prosecutor v. Laurent Gbagbo* (Decision on the confirmation of charges against Laurent Gbagbo) ICC-02/11-01/11-656-Red (12 June 2014) **[*Gbagbo* Charges Decision]**.

28. *Prosecutor v. Laurent Gbagbo* (Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court) ICC-02/11-01/11-286-Red (2 November 2012) **[*Gbagbo* First Fitness Decision]**.

29. *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (Decision on the confirmation of charges) ICC-01/04-01/07-717 (30 September 2008) **[*Katanga* Charges Decision]**.

30. *Prosecutor v. Germain Katanga* (Judgment pursuant to article 74 of the Statute) ICC-01/04-01/07-3436-tENG (7 March 2014) **[*Katanga* Judgment]**.

31. *Prosecutor v. Thomas Lubanga Dyilo* (Judgment pursuant to article 74 of the Statute) ICC-01/04-01/06-2842 (14 March 2012) **[*Lubanga* Judgment]**.

32. *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali* (Decision on the Confirmation of charges) ICC-01/09-02/11-382-Red (23 January 2012) **[*Kenyatta et al.* Charges Decision]**.

33. *Prosecutor v. Bosco Ntaganda (*Judgment) ICC-01/04-02/06-2359 (8 July 2019) **[*Ntaganda* Judgment]**.

34. *Prosecutor v. Dominic Ongwen* (Defence Request for a Stay of the Proceedings and Examinations Pursuant to Rule 135 of the Rules of Procedure and Evidence) ICC-02/04-01/15-620-Red (5 December 2016) **[*Ongwen* Rule 135 Request]**.

35. *Prosecutor v. Dominic Ongwen* (Trial Judgment) ICC-02/04-01/15-1762-Red (4 February 2021) **[*Ongwen* Judgment]**.

36. *Prosecutor v. Dominic Ongwen* (Decision on the Defence Request to Order a Medical Examination of Dominic Ongwen) ICC-02/04-01/15-637-Red (16 December 2016) **[Ongwen Medical Examination Decision]**

37. *Situation in the Republic of the Philippines* (Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute) ICC-01/21-12 (15 September 2021) **[*Philippines* Art. 15 Decision]**.

38. *Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute) ICC-01/09-01/11-373 (04 February 2012) **[*Samoei Ruto et al.* Charges Decision]**.

International Criminal Tribunal for the Former Yugoslavia

39. *Prosecutor v. Tihomir Blaškić* (Trial Judgment,) IT-95-14-T (3 March 2000) **[*Blaškić* Judgment]**.

40. *Prosecutor v. Rasim Delić* (Decision on Outcome of the Proceedings) IT-04-83-A (29 June 2010) **[*Delić* Outcome of the Proceedings]**.

41. *Prosecutor v. Vlastimir Đorđević* (Appeal Judgment) IT-05-87/1-A (27 January 2014) **[*Đorđević* Appeal Judgment]**.

42. *Prosecutor v. Vladimir Kovačević* (Decision on Accused's Fitness to Enter a Plea and Stand Trial) IT-01-42/2-I (12 April 2006) **[*Kovačević* Fitness Decision]**.

43. *Prosecutor v. Vladimir Kovačević,* (Decision on Appeal against Decision on Referral Under Rule 11*bis*) IT-01-42/2-AR11bis.1 (28 March 2007) **[*Kovačević* Appeal Decision]**.

44. *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Judgment) IT-96-23 & IT-96-23/1-A (12 June 2002) **[*Kunarac et al.* Judgment]**.

45. *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu* (Judgment) IT-03-66-T (30 November 2005) **[*Limaj et al.* Judgment]**.

46. *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, Milan Gvero, Vinko Pandurević* (Decision on request to terminate appellate proceedings in relation to Milan Gvero) IT-05-88-A (16 January 2013) **[*Gvero* Termination Decision]**.

47. *Prosecutor v. Pavle Strugar* (Decision re the defence motion to terminate proceedings IT-01-42-T (26 May 2004) **[*Strugar* Termination Decision]**.

48. *Prosecutor v. Duško Tadić* (Decision on the Defence motion for interlocutory appeal on jurisdiction) IT-94-1-AR72 (2 October 1995) **[*Tadić* Jurisdiction Appeal]**.

49. *Prosecutor v. Duško Tadić* (Opinion and Judgment) IT-94-1-T (7 May 1997) **[*Tadić* Judgment]**.

International Criminal Tribunal for Rwanda

50. *Prosecutor v. Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) **[*Akayesu* Judgment]**.

51. *Prosecutor v. Eliézer Niyitegeka* (Decision Dismissing a Request) ICTR-96-14-T (13 April 2018) **[*Niyitegeka* Decision Dismissing a Request].**

Special Court for Sierra Leone

52. *Prosecutor v. Charles Ghankay Taylor* (Judgment) SCSL-03-01-T (18 May 2012) **[*Taylor* Judgment]**.

ARTICLES

53. C Casasola-Castro *et al.,* 'Short-term and long-term effects of diazepam on the memory for discrimination and generalization of scopolamine' (2017) 234(20) Psychopharmacology 3083 [**Casasola (2017)]**.

54. I Freckelton and M Karagiannakis, 'Fitness to Stand Trial under International Criminal Law: Challenges for Law and Policy' (2014) 12 Journal of International Criminal Justice 705 [**Freckelton and Karagiannakis (2014)]**.

55. J L Laskin and K G Williamson, 'An evaluation of the amnesic effects of diazepam sedation' (1984) 42(11) Journal of oral and maxillofacial surgery: official journal of the American Association of Oral and Maxillofacial Surgeons 712 **[Laskin and Williamson (1984)]**.

56. C N Smith *et al.*, 'The nature of anterograde and retrograde memory impairment after damage to the medial temporal lobe' (2013) 51(13) Neuropsychologia 2709 **[Smith (2013)]**.

BOOKS

57. O Corten and P Klein, *The Vienna Conventions on the Law of Treaties: A Commentary* (Oxford University Press 2011) **[Corten (2011)]**.

58. O Dörr and K Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2018) **[Dörr (2018)]**.

59. International Committee of the Red Cross, *Commentary on the First Geneva Convention* (Cambridge University Press 2017) **[Geneva Convention Commentary (2017)]**.

60. Institute of Medicine (US), *Medicare: A Strategy for Quality Assurance*, Volume I (ed Kathleen N. Lohr 1990) **[Institute of Medicine (1990)]**.

61. M Klamberg, *Commentary on the Law of the International Criminal Court* (Torkel Opsahl Academic EPublisher 2017) **[Klamberg (2017)]**.

62. H Olásolo, *The Triggering Procedure of the International Criminal Court* (M. Nijhoff Publishers 2005) **[Olásolo (2005)]**.

63. W Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd edition Oxford Commentaries on International Law 2016) **[Schabas (2016)]**.

64. M Ssenyonjo, 'State Withdrawals from the Rome Statute of the International Criminal Court: South Africa, Burundi, and The Gambia' in Jalloh CC and Bantekas I (eds), *The International Criminal Court and Africa (Oxford University Press* 2017) **[Ssenyonjo (2017)]**.

65. O Triffterer and K Ambos, *Rome Statute of the International Criminal Court: A Commentary* (C.H. Beck-Hart-Nomos 2016) **[Triffterer (2016)]**.

INTERNET RESOURCES

66. Amnesty International 'Burundi: ICC withdrawal will not derail wheels of justice' (27 October 2017) <https://hrij.amnesty.nl/burundi-icc-withdrawal/> accessed 15 February **[Amnesty international (2017)]**.

67. M Cascella and Y Al Khalili, 'Short-Term Memory Impairment' (Statpearls, 2023) <https://www.ncbi.nlm.nih.gov/books/NBK545136/> accessed 15 February 2024 **[Cascella (2023)]**.

68. ICRC, 'Customary IHL Rules' (2024) <https://ihl-databases.icrc.org/en/customary-ihl/v1> accessed 19 February 2024 **[ICRC IHL (2024)]**.

69. Merriam-Webster dictionary <https://www.merriam-webster.com/> accessed 15 February 2024 **[Merriam-Webster]**.

70. Oxford English Dictionary <https://www.oed.com/> accessed 15 February 2024 **[Oxford Dictionary]**.

71. R A Pangalangan, 'The Elephant in the Courtroom: ICC Temporal Jurisdiction Over the Situation in the Philippines' (Just Security, 29 September 2023) <www.justsecurity.org/88924/the-elephant-in-the-courtroom-icc-temporal-jurisdiction-over-the-situation-in-the-philippines/> accessed 15 February 2024 **[Pangalangan (2023)]**.

72. A Whiting, 'If Burundi Leaves the Int'l Criminal Court, Can the Court Still Investigate Past Crimes There?' (Just Security, 12 October 2016) <www.justsecurity.org/33501/burundi-leaves-icc-international-criminal-court-investigate-crimes-there/> accessed 15 February 2024 **[Whiting (2016)]**.

OTHERS

73. Report of Dr Meley Baleron, Court Appointed Psychiatrist (21 August 2022) **[Baleron Report (2022)]**.

74. *Prosecutor v. Lionel Strong* (Appeal from the Pre-Trial Chamber's Denial of Confirmation of Charges) **[Case Facts]**.

75. N Cowan, 'What are the differences between long-term, short-term, and working memory?' (2008) 169 Progress in Brain Research (Author manuscript) **[Cowan (2008)]**.

76. Diazepam (2022). Medical leaflet **[Diazepam (2022)]**.

77. Omega Foundation, 'Crowd control technologies: An appraisal of technologies for political control' (2000) Working Document for the STOA Panel **[Omega Foundation (2000)]**.

78. Report of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on the destruction of the archaeological ruins of Tirosh (4 July 2022) **[UNESCO Report (2022)]**.

STATEMENT OF FACTS

Factual Background

1. Sirax is located in the peninsula comprising the ancient Kingdom of Tirosh. In 2018 the PM of Sirax decreed that all artefacts of the Tirosh period must be destroyed.

2. Shortly after, an opposition group whose members claim to be descendants of the ruling elite of Tirosh founded the KP to preserve the ancient heritage of Sirax. In November 2020 the Sirax Parliament enacted a law designating the KP as a terrorist organisation and banned all its activities.

3. In June 2021, the ruins of the ancient city of Highcastle were unearthed during construction works. The defendant, and at the time mayor of Newcastle, Lionel Strong, ordered the destruction of the archaeological site. Members of the KP tried to stop the demolition process, and in clashes with the municipal forces, 800 members of the KP and 112 members of the municipal security forces were killed. The clashes lasted until the evening of 9 June 2021 and the demolition of the ruins resumed the next day.

4. On 21 July 2022, the defendant was hospitalised after suffering a haemorrhagic stroke.

Procedural Background

5. Sirax ratified the Statute on 30 August 2011 and it entered into force on 1 November 2011.

6. On 15 June 2021, the OTP initiated a PE into the events in Sirax under art. 15 RS.

7. On 16 June 2021, Sirax notified its intention to withdraw from the Statute according to art. 127 RS. The withdrawal became effective one year later.

8. On 5 July 2022, the PTC authorised the initiation of an investigation into the situation in Sirax pursuant to art. 53 RS.

9. On 6 July 2022, the PTC issued an arrest warrant for the defendant on the basis that there were reasonable grounds to believe that he was criminally liable for the CAH of persecution under art. 7(1)(h) RS and for the war crime of attacks on historic monuments under art. 8(2)(e)(iv) RS.

10. On 7 August 2022, the PTC appointed a psychiatric expert, Dr Meley Baleron, to evaluate the defendant's mental state. Dr Baleron concluded that the defendant was not fit to participate meaningfully in his trial because of the severity of his cognitive impairment.

11. On 30 October 2022, the PTC declined to confirm the charges, declared the defendant unfit to stand trial, and terminated the proceedings against him.

ISSUES

- I -

Whether the PTC erred in holding that the Court lacked jurisdiction over the defendant because Sirax had withdrawn from the RS under art. 127 RS despite the Prosecutor's public announcement of a PE prior to the effective date of Sirax's withdrawal.

- II -

Whether the PTC erred in holding that the allegations and evidence are insufficient to establish substantial grounds to believe that the defendant committed attacks on historic monuments in a NIAC under art. 8(2)(e)(iv) RS or the CAH of persecution under art. 7(1)(h) RS.

- III -

Whether the PTC erred in holding that the defendant was not fit to stand trial under art. 64(2) RS and rule 135 RPE.

SUMMARY OF ARGUMENTS

-I-

The PTC erred in holding that the Court lacked jurisdiction over the defendant because of Sirax's withdrawal under art. 127 RS

1. The Court retains jurisdiction indefinitely over crimes committed while Sirax was a party to the Statute.

2. In any case, the Court has jurisdiction because the PTC erred in holding that the PE was not a matter under consideration by the Court under art. 127(2) RS.

-II-

The PTC erred in holding that the allegations and evidence are insufficient to establish substantial grounds to believe that the defendant committed a war crime of attacking protected objects under art. 8(2)(e)(iv) RS or the CAH of persecution under art. 7(1)(h) RS

1. The charged conduct constitutes the war crime of attacking protected objects under art. 8(2)(e)(iv) RS as there was a NIAC in Sirax and there was a nexus between the destruction of the archaeological site and the NIAC.

2. The charged conduct constitutes the CAH of persecution under art. 7(1)(h) RS as the alleged acts constitute acts of persecution and the contextual elements are met.

-III-

The PTC erred in holding that the defendant was not fit to stand trial under art. 64(2) RS and rule 135 RPE

1. The AC should not be satisfied that the accused is unfit to stand trial because Dr Baleron's evaluation should be corroborated, the duration and extent of the evaluation are insufficient, and the report should be disregarded as it contains incorrect information.

2. In any event, the proceedings should be postponed, not terminated.

WRITTEN ARGUMENTS

I) THE COURT ERRED IN HOLDING THAT THE COURT LACKED JURISDICTION OVER THE DEFENDANT BECAUSE OF SIRAX'S WITHDRAWAL UNDER ART. 127 RS

1. The withdrawal of Sirax from the Statute on 16 June 2021 does not affect the Court's jurisdiction over Mr Strong. The Court may still exercise its jurisdiction despite withdrawal because (1) the Court retains jurisdiction indefinitely over the crimes committed when Sirax was a party to the Statute under art. 127 RS and 70(1)(b) VCLT, and (2) in any case, the Court retains jurisdiction after withdrawal because the PE initiated before withdrawal is a "matter under consideration by the Court" under art. 127(2) RS.

1) The Court retains jurisdiction indefinitely over crimes committed when Sirax was a party to the Statute under art. 127(2) RS and art. 70(1)(b) VCLT

2. Under art. 127(2) RS, withdrawal of a state party shall not discharge it from the obligations which arose from the Statute while it was a party to it. This article gives effect to the principle set out in art. 70(1)(b) VCLT.[1] The acceptance of the Court's jurisdiction under arts. 11(2) and 12(1) RS creates such a legal situation which is not affected retroactively by Sirax's withdrawal. Therefore, the Court retains jurisdiction indefinitely over the period when Sirax was a party to the Statute. This is supported by (a) the ordinary meaning of arts. 11(2) and 12(2) RS taken in their context and (b) considering the object and purpose of the Statute as required by art. 31(1) VCLT.

a) The ordinary meaning of arts. 11 and 12 RS taken in their context demonstrates that acceptance of jurisdiction is a legal situation which is not affected by withdrawal

3. Art. 11(2) RS states that when a state accedes to the Statute, the Court gains jurisdiction over the crimes committed while the Statute is in force in that state.[2] According to art. 12(1) RS, a state automatically accepts the Court's subject matter jurisdiction under art. 5 RS upon becoming a party to the Statute. This jurisdiction extends to crimes committed on the territory of that state

[1] *Situation in the Republic of Burundi* (Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi") ICC-01/17-9-Red (09 November 2017) [25]; *Situation in the Republic of the Philippines* (Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute) ICC-01/21-12 (15 September 2021) [111]; M Klamberg, *Commentary on the Law of the International Criminal Court* (Torkel Opsahl Academic EPublisher 2017), p. 756; O Triffterer and K Ambos, *Rome Statute of the International Criminal Court: A Commentary* (C.H. Beck-Hart-Nomos 2016), p. 2324.

[2] Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002, as amended 2010) 2187 UNTS 3, art. 11(2).

and by its nationals.[3] In addition, art. 70(1)(b) VCLT states that withdrawal does not affect legal situations created by execution of the treaty. Legal situations, in that sense, are permanent changes in the parties' legal situation, including the recognition and acceptance of a state of affairs.[4] Therefore, they must be created by executed clauses of the treaty which recognise or establish such permanent states of affairs.[5]

4. The wording of arts. 11(2) and 12(1) RS sets out that the acceptance of the Court's jurisdiction is automatic upon accession to the Statute.[6] The acceptance of jurisdiction is therefore executed by accession. Moreover, the recognition of this state of affairs affects permanently the member state's legal situation as it is bound to respect the Court's complementary jurisdiction for crimes committed when the state was party.[7] Therefore, the acceptance of the Court's jurisdiction under arts. 11(2) and 12(1) RS is a legal situation in the sense of art. 70(1)(b) VCLT and it cannot be affected by withdrawal.

5. Moreover, case law of the ICC can provide context to support this interpretation.[8] The Court confirmed twice that the acceptance of jurisdiction is a legal situation which may not be affected by the withdrawal of a state. In *Burundi*, it held that: "acceptance of the *jurisdiction* of the Court remains unaffected by a withdrawal [...]. Therefore, the Court retains jurisdiction over any crimes falling within its jurisdiction [...], the *exercise* of the Court's jurisdiction [...] is, as such, not subject to any time limit".[9] It reaffirmed this stance in *Philippines,* finding that "withdrawal […] does not affect the Court's exercise of jurisdiction over crimes committed before the effective date of the withdrawal".[10] The Court here clearly sets out that the acceptance of jurisdiction is a legal situation created before withdrawal. Therefore, it retains its jurisdiction over crimes committed when the withdrawing state was party to the Statute, even after withdrawal takes effect.

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[3] RS, art. 12(2).
[4] O Dörr and K Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2018), p. 1292.
[5] *Ibid.*; O Corten and P Klein, *The Vienna Conventions on the Law of Treaties: A Commentary* (Oxford University Press 2011), p. 1592.
[6] H Olásolo, *The Triggering Procedure of the International Criminal Court* (M. Nijhoff Publishers 2005), p.131.
[7] RS, arts. 12(2), 17(1).
[8] *Prosecutor v. Germain Katanga* (Judgment pursuant to article 74 of the Statute) ICC-01/04-01/07-3436-tENG (7 March 2014) [47]; *Prosecutor v. Jean-Pierre Bemba Gombo* (Judgment pursuant to Article 74 of the Statute) ICC-01/05-01/08-3343 (21 March 2016) [79].
[9] *Burundi* Art. 15 Decision [24].
[10] *Philippines* Art. 15 Decision [111].

b) The object and purpose of the Statute confirm that the Court retains jurisdiction over crimes committed when Sirax was a party to the Statute

6. The object and purpose of the Statute is to combat impunity and to ensure accountability.[11] If the jurisdiction of the Court expired after withdrawal, state parties would be able to use withdrawal as a tool to avoid the Court's jurisdiction which would frustrate those purposes.[12] The treaty must therefore be interpreted broadly to prevent states from withdrawing to escape the Court's jurisdiction.[13] Consequently, arts. 11(2) and 12(1) RS must refer to an acceptance of jurisdiction which does not lapse once a state withdraws from the Statute.

7. In conclusion, when Sirax acceded to the Statute it automatically accepted the Court's jurisdiction over crimes committed while it was a party to the Statute, namely from 1 November 2011 to 16 June 2022.[14] This is a legal situation under art. 70(1)(b) VCLT and therefore Sirax's withdrawal does not affect it. Consequently, the Court retains jurisdiction over the crimes committed by the defendant on 7-9 June 2021 since Sirax was a party at this time.[15]

2) In any case, the Court retains jurisdiction after withdrawal because the PE initiated before withdrawal is a "matter under consideration by the Court" under art. 127(2) RS

8. Art. 127(2) RS states that withdrawal cannot prejudice the continued consideration of any matter which was already under consideration by the Court prior to effective withdrawal. Since a PE is a "matter under consideration by the Court" the Court is able to exercise its jurisdiction on the matter. PEs are covered by art. 127(2) RS as matters under consideration by the Court because (a) the PEs are included within "matter" and (b) the OTP is included in the meaning of "the Court".

a) PEs are "matter[s] under consideration by the Court" in the sense of art. 127(2) RS

9. The Statute does not define "matter". It must be interpreted in good faith according to art. 31 VCLT. The interpretation must also comply with the principle of effectiveness.[16] Therefore, interpretations disregarding or rendering any provisions of the Statute void are excluded. PEs are

[11] RS, preamble, art. 1.
[12] W Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd edition Oxford Commentaries on International Law 2016) p. 1535; M Ssenyonjo, 'State Withdrawals from the Rome Statute of the International Criminal Court: South Africa, Burundi, and The Gambia' in Jalloh CC and Bantekas I (eds), *The International Criminal Court and Africa* (Oxford University Press 2017), p. 240.
[13] Schabas (2016) p. 1535, Klamberg (2017) p. 757.
[14] *Prosecutor v. Lionel Strong* (Appeal from the Pre-Trial Chamber's Denial of Confirmation of Charges) [4, 6].
[15] *Ibid.* [1].
[16] *Katanga* Judgment [46]; *Bemba* Judgment [77].

"matter[s] under consideration" because (i) the ordinary meaning of "matter" includes PEs, and both (ii) the context of the Statute and (iii) its object and purpose require that PEs be included in "matter".

i) The ordinary meaning of "matter" includes PEs

10. "Matter" is defined as an event, circumstance, or state of things which is an object of concern or consideration.[17] A PE's goal is collecting "all relevant information necessary to reach a fully informed determination of whether there is a reasonable basis to proceed with an investigation".[18] Consequently, PEs fall under the ambit of "matter" because PEs are a clear expression of concern and consideration over a situation or event. Therefore, "matter under consideration" must be interpreted as including PEs.[19]

ii) The context of the Statute requires that PEs be included in "matter"

11. The context of the term "matter" in art. 127(2) RS may be determined based on the text of the Statute.[20] Notably, an effective interpretation of art. 127(2) RS requires that PEs be included in "matter". The article already refers to "investigations" and "proceedings", it states that those are not affected by withdrawal. If "matters" were to only include investigations and the proceedings that ensue, then the last sentence of art. 127(2) RS would be devoid of practical application since investigations and proceedings are already covered in the same sentence.[21] The last sentence of art. 127(2) RS must therefore refer to another, earlier stage of proceedings. The only remaining stage of proceedings which is not covered by art. 127(2) RS and may only be covered by "matter" is the period preceding the opening of a formal investigation under art. 53 RS. For *proprio motu* proceedings, this period refers to the PEs conducted by the OTP. Therefore, "matter" in the sense of art. 127(2) RS includes PEs.

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[17] Merriam-Webster dictionary <https://www.merriam-webster.com/> accessed 15 February 2024, "matter"; Oxford English Dictionary <https://www.oed.com/> accessed 15 February 2024, "matter".
[18] Policy Paper on Preliminary Examinations, November 2013, The Office of the Prosecutor, <http://www.legal-tools.org/doc/acb906/> accessed 15 February 2024 [2].
[19] Schabas (2016) p. 1536; Amnesty International 'Burundi: ICC withdrawal will not derail wheels of justice' (27 October 2017) <https://hrij.amnesty.nl/burundi-icc-withdrawal/> accessed 15 February; A Whiting, 'If Burundi Leaves the Int'l Criminal Court, Can the Court Still Investigate Past Crimes There?' (Just Security, 12 October 2016) <www.justsecurity.org/33501/burundi-leaves-icc-international-criminal-court-investigate-crimes-there/> accessed 15 February 2024; R A Pangalangan, 'The Elephant in the Courtroom: ICC Temporal Jurisdiction Over the Situation in the Philippines' (Just Security, 29 September 2023) <www.justsecurity.org/88924/the-elephant-in-the-courtroom-icc-temporal-jurisdiction-over-the-situation-in-the-philippines/> accessed 15 February 2024.
[20] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art. 31(2).
[21] RS, art. 127(2).

iii) The purpose and object of the treaty require that PEs be included in "matter" in the sense of art. 127(2) RS

12. The object and purpose of the treaty is to combat impunity and to ensure accountability.[22] The treaty must be interpreted in a broad way to prevent states from withdrawing to avoid the Court's jurisdiction.[23] Excluding PEs from "matter" would allow states to try and withdraw after the announcement of the opening of a PE to avoid the Court's ensuing investigations.[24] Therefore, "matter" must include PEs to avoid such withdrawals.

b) The OTP is included in "the Court" in the sense of art. 127(2) RS

13. The meaning of "the Court" in art. 127(2) RS must be determined according to its ordinary meaning taken in its context and in light of the object and purpose of the Statute.[25] The ordinary meaning of "the Court" in the context of the Statute is found in art. 34 RS. It states that the Court includes the presidency, the chambers, the OTP, and the registry. Moreover, art. 42(1) RS also sets out that the OTP is an organ of the Court. Therefore, in the context of the Statute, "the Court" includes the OTP.

14. Moreover, an effective interpretation of the Statute requires that the OTP be included in "the Court". The only stage of *proprio motu* proceedings that is not covered by "investigations" and "proceedings" in art. 127(2) RS is the PE in which the judiciary is not involved.[26] The judiciary is however involved from the start of investigations.[27] Excluding the OTP from "the Court" in the last sentence of art. 127(2) RS would render the last part of the sentence inoperative since all the activities of the judiciary are already covered by "investigations" and "proceedings". Therefore, "the Court" in art. 127(2) RS must include the OTP. This reading is also in line with the object and purpose of the treaty which, as demonstrated above, requires a broad interpretation of the Statute,[28] thus including the OTP within "the Court".

[22] *Supra* [6].
[23] *Ibid.*; Schabas (2016) p. 1535; Ssenyonjo (2017) p. 240; Whiting (2016).
[24] *Supra* [6].
[25] VCLT, art. 31(1).
[26] *Supra* [11].
[27] RS, art. 15(4).
[28] *Supra* [6, 12].

15. In conclusion, Sirax's withdrawal cannot affect the continued consideration of the PE since it was a "matter under consideration by the Court" under art. 127(2) RS. Therefore, the Court retains jurisdiction over Sirax after withdrawal.

II) THE PTC ERRED IN HOLDING THAT THE ALLEGATIONS AND EVIDENCE ARE INSUFFICIENT TO ESTABLISH SUBSTANTIAL GROUNDS TO BELIEVE THAT THE DEFENDANT COMMITTED THE WAR CRIME OF ATTACKING PROTECTED OBJECTS UNDER ART. 8(2)(e)(iv) RS OR THE CAH OF PERSECUTION UNDER ART. 7(1)(h) RS

1) The charged conduct constitutes the war crime of attacking protected objects under art. 8 (2)(e)(iv) RS

16. The conduct constitutes the war crime of attacking protected objects because (a) there was a NIAC in Sirax and (b) there was a nexus between the destruction of the ruins and the NIAC.

a) There was a NIAC in the Sirax

17. For an act to be considered the war crime of attacking protected objects, the conduct must have taken place in the context of and be associated with a NIAC.[29] A NIAC exists whenever there is violence between governmental authorities and OAGs or between two or more OAGs within a State.[30] The criteria used to assess the existence of a NIAC must only be used as a minimum standard to distinguish it from unorganised and short insurrections or from terrorist activities.[31] This standard must be applied broadly in order to include as many situations as possible under the protection of IHL.[32] There are two elements to assess the existence of a NIAC: the level of military organisation and the level of intensity.[33] In the present case, there was a NIAC as (i) the protesters had the requisite level of military organisation and (ii) the fighting was of the required level of intensity.

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[29] Elements of Crimes, 2013, ICC-PIOS-LT-03-002/15_Eng, art. 8 (2)(e)(iv)(4º).
[30] *Prosecutor v. Duško Tadić* (Decision on the Defence motion for interlocutory appeal on jurisdiction) IT-94-1-AR72 (2 October 1995) [70]; *Prosecutor v. Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) [619]; *Prosecutor v. Thomas Lubanga Dyilo* (Judgment pursuant to article 74 of the Statute) ICC-01/04-01/06-2842 (14 March 2012) [533]; RS, art. 8 (2)(f).
[31] *Lubanga* Judgment [537].
[32] *Prosecutor v. Duško Tadić* (Opinion and Judgment) IT-94-1-T (7 May 1997) [562].
[33] *Tadić* Judgment [562]; *Lubanga* Judgment [533]; *Akayesu* Judgment [619].

i) The protesters had the requisite level of military organisation

18. An OAG is a group that has the ability to carry out protracted armed violence.[34] A small degree of organisation by the parties will suffice to meet the organisation threshold.[35] Factors relevant to the determination of the level of organisation are the existence of a certain degree of hierarchy and discipline,[36] command structure and rules, the ability to define a unified military strategy and use military tactics, and the extent to which military equipment, including firearms, is available.[37] This list of factors is not exhaustive and should be applied flexibly.[38]

19. At the moment of the hostilities, the KP had more than 100,000 members. It had an internal hierarchy and discipline with a clear command, as is shown by the fact that Alinda Jasper was in control of the group.[39] The fact that she mobilised more than 800 individuals demonstrates the level of hierarchy and discipline of the group. Additionally, those individuals had access to weapons such as handguns and bats.[40] The members of the KP were wearing armbands with a distinctive insignia,[41] a clear sign of the intention of the KP to distinguish itself and to be a part of a unitary military group.

20. Therefore, factors to recognise a group as an OAG present in the case of the KP. Consequently, the protesters, as members of the KP, had the requisite level of military organisation.

ii) The fighting was of the required level of intensity

21. The intensity threshold is met. Various factors to assess the level of intensity are the severity of the attacks and potential increase in armed clashes, their spread over the territory and over a period of time, the increase in the number of government forces, or the mobilisation and the distribution of weapons among both parties to the conflict.[42]

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[34] *Lubanga* Judgment [536].
[35] *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu* (Judgment) IT-03-66-T (30 November 2005) [89].
[36] *Tadić* Judgment [562].
[37] *Prosecutor v. Bosco Ntaganda* (Judgment) ICC-01/04-02/06-2359 (8 July 2019) [704].
[38] *Limaj et al.* Judgment [86]; *Lubanga* Judgment [537]; *Katanga* Judgment [1186].
[39] Report of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on the destruction of the archaeological ruins of Tirosh (4 July 2022) [7].
[40] *Ibid.*
[41] *Ibid.*
[42] *Lubanga* Judgment [538]; *Ntaganda* Judgment [716]; *Katanga* Judgment [1187].

22. The intensity of the hostilities is established by the fact that 2,000 members of the KP and 3,500 members of the municipal security forces of Newcastle participated in the armed clashes that took place in the ruins between 8 June 2021 and 9 June 2021[43]. The large-scale presence of weapons among the two groups is another indication of the intensity of the conflict. The protesters used handguns and bats, the municipal forces used rapid-fire assault rifles and rocket-propelled grenades.[44] Those weapons are not usually used as riot-control weapons but are common in the battlefield,[45] and their use resulted in the death of 900 people, 800 of them civilian protesters.[46] Consequently, these events are of enough intensity to consider that the required threshold is met. Therefore, there was a NIAC in Sirax.

b) There was a nexus between the destruction of the archaeological site and the NIAC in Sirax

23. There is a war crime under art. 8(2)(e)(iv) RS even though the destruction of the archaeological site occurred after the fighting had ended. For an act to be considered a war crime of attacking protected objects, there must be a nexus between the act and the NIAC.[47] This nexus is present even if the crimes were temporally and geographically remote from the actual fighting because the scope of IHL extends beyond the exact time and place of the hostilities.[48] Protected persons and objects, as defined in art. 3 GC, may be located outside of the battlefield in areas where there are no hostilities taking place.[49] There is a nexus between the destruction of the ruins and the armed conflict in Sirax because (i) no peaceful settlement was achieved before the destruction of the ruins and (ii) the destruction of the archaeological site was an intrinsic part of the armed conflict.

i) A peaceful settlement of the conflict was not achieved before the destruction of the archaeological site occurred

24. IHL applies from the beginning of a NIAC and extends beyond the cessation of hostilities, until a peaceful settlement is achieved,[50] until the parties cease to exist, or until a lasting cessation of

[43] UNESCO Report (2022) [7, 8].
[44] *Ibid.* [7].
[45] Omega Foundation, 'Crowd control technologies: An appraisal of technologies for political control' (2000) Working Document for the STOA Panel [8-14].
[46] UNESCO Report (2022) [7, 8].
[47] EoC, art. 8(2)(e)(iv)(4º).
[48] *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Judgment) IT-96-23 & IT-96-23/1-A (12 June 2002) [57]; *Tadić* Jurisdiction Appeal [67-69].
[49] *Tadić* Jurisdiction Appeal [67-69].
[50] *Ibid*.

armed confrontations without real risk of resumption has taken place.[51] A temporary pause in the armed confrontations does not entail the end of a NIAC.[52]

25. Regarding the destruction of the archaeological ruins, the pause of the fighting was not the end of the conflict. The pause happened only because of a military defeat and not because a peaceful settlement was achieved.[53] Nothing at this time indicates a decrease in the risk of further hostilities. This means that the NIAC in the Sirax must be considered inconclusive.

ii) The destruction of the archaeological site was an intrinsic part of the NIAC and should not be considered as a separate event

26. The existence of a NIAC must have played a substantial part in the perpetrator's decision to commit the war crime.[54] However, the armed conflict alone does not have to be the root of the conduct and it is not necessary that the conduct take place in the midst of battle.[55] In *Al Mahdi*, the Court found the nexus between the destruction of protected objects and a NIAC in a situation where the actual fighting was temporally and geographically remote from the destruction of the protected sites.[56] When the destruction took place, the closest hostilities were taking place 400 kilometres away from the city.[57] The Court established the nexus between the destruction of the protected objects in Timbuktu and the NIAC arguing that the destruction of the sites was only possible because of the previous fight and conquest of the city by the OAG.[58]

27. In the present case, the destruction of the ruins took place just hours before the end of the combat between the members of the KP and the municipal security force.[59] The destruction of the archaeological site was the reason why the armed conflict started and it is an intrinsic part of the conflict. The use of violence by the municipal security force against the protesters serves the purpose of making the destruction possible. Like in *Al Mahdi,* where the capture of Timbuktu was necessary for the later destruction of the protected objects, the violent crackdown on the members of the KP was necessary for the subsequent destruction of the archaeological site. In both cases

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[51] International Committee of the Red Cross, *Commentary on the First Geneva Convention* (Cambridge University Press 2017) [491].
[52] *Ibid.*
[53] UNESCO Report (2022) [8].
[54] *Limaj et al.* Judgment [91]; *Kunarac et al.* Judgment [57]; *Prosecutor v. Charles Ghankay Taylor* (Judgment) SCSL-03-01-T (18 May 2012) [546].
[55] *Bemba* Judgment [142].
[56] *Prosecutor v. Ahmad Al Faqi Al Mahdi* (Judgment and Sentence) ICC-01/12-01/15-171 (27 September 2017) [36].
[57] *Ibid.*
[58] *Ibid.* [49].
[59] UNESCO Report (2022) [8].

the fighting was remote but there is a nexus with a NIAC nonetheless. Therefore, there is a nexus between the destruction of the archaeological site and the NIAC.

2) The charged conduct constitutes the CAH of persecution under art. 7(1)(h) RS

28. The charged conduct constitutes the CAH of persecution under art. 7(1)(h) RS as (a) the conduct constitutes persecution and (b) the contextual elements are met.

a) The conduct constitutes persecution

29. The material elements of persecution are met as (i) the destruction of the ruins severely deprived the members of the KP of their fundamental rights, (ii) the protesters were targeted because they were members of the KP, and (iii) such targeting was based on discriminatory grounds.

i) The destruction of the ruins severely deprived the members of the KP of their fundamental rights

30. For an act to be considered persecution the perpetrator must severely deprive one or more persons of fundamental rights.[60] Parameters for defining fundamental rights can be derived from international instruments on international human rights.[61] The right to self-determination of peoples which includes to "freely pursue their […] cultural development" is enshrined in the ICCPR and ICESCR.[62] The right to cultural life and its physical objects has also been acknowledged in various international legal instruments.[63] Therefore, both can be considered as fundamental rights.

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[60] EoC, art. 7(1)(h)(1).
[61] *Ntaganda* Judgment [991].
[62] Policy on Cultural Heritage, June 2021, The Office of the Prosecutor, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf> accessed 15 February 2024 [75]; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 1(1); International Covenant on Economic, Social, and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art. 1(1).
[63] *Prosecutor v. Ahmad Al Faqi Al Mahdi* (Reparations Order) ICC-01/12-01/15-236 (17 August 2017) [14]; ICCPR, art. 27; ICESCR, art. 15; ICRC, 'Customary IHL Rules' (2024) <https://ihl-databases.icrc.org/en/customary-ihl/v1> accessed 19 February 2024, rule 40; Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A(III)), art. 27(1); Geneva Convention relative to the protection of civilian persons in time of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art. 53; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609, art. 16; Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 215, art. 4; RS, art. 8(2)(e)(xii).

31. The ICTY held in *Đorđević* and *Blaškić* that the destruction of cultural property or objects representing a specific social, religious, cultural, or other group can constitute persecution.[64] The ICC confirmed in *Al Mahdi* that the destruction of cultural heritage can "deprive a community of its identity and memory".[65] Considering the importance of cultural heritage to the identity of an entire community, crimes against it or affecting it can amount to persecution. They are often committed as part of a persecutory campaign on political grounds.[66]

32. To be recognised as cultural heritage, cultural objects must serve as "testimonies of human creativity and genius",[67] representing a "unique and important testimony of the culture and identities of peoples".[68] Cultural heritage can encompass sites, structures, and remains with archaeological, historical, religious, cultural, or aesthetic value.[69]

33. The ancient Tirosh artefacts are remnants of the ancestry of the members of the KP, as they "contain the visage of Karaxis".[70] The KP was founded specifically to preserve and celebrate these ancient artefacts.[71] This fact emphasises the significant value of those artefacts to the group. Safeguarding them constitutes the essence of the party and constitutes means through which its members honour their ancestors. The archaeological site is located where the ancient city of Highcastle once stood.[72] This city was home to the ancestors of the members of the KP.[73] It encompasses individual artefacts and an extensive complex of buildings, roads, and monuments adorned with dragon motifs from the Tirosh era.[74] It is one of "the most significant archaeological finds in the past 100 years"[75] and the "world's greatest archaeological discovery in a century".[76] UNESCO considered its destruction as one of the "the most egregious cases of "cultural cleansing" in the 21st century".[77] Consequently, it holds great significance for the members of the KP and serves as a unique and important testimony of their culture and identity. Therefore, it can be considered cultural heritage. As the archaeological ruins are cultural heritage and access to

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[64] *Prosecutor v. Vlastimir Đorđević* (Appeal Judgment) IT-05-87/1-A (27 January 2014) [567]; *Prosecutor v. Tihomir Blaškić* (Trial Judgment,) IT-95-14-T (3 March 2000) [227].
[65] *Al Mahdi* Reparations [14].
[66] OTP Policy on Cultural Heritage [73, 74].
[67] *Al Mahdi* Reparations [16].
[68] OTP Policy on Cultural Heritage [4].
[69] *Al Mahdi* Reparations [15].
[70] UNESCO Report (2022) [5].
[71] *Ibid*.
[72] *Ibid.* [6, 2].
[73] *Ibid.* [2, 5].
[74] *Ibid.* [6].
[75] *Ibid.* [1].
[76] *Ibid.* [6].
[77] *Ibid.* [9].

cultural heritage is part of the right to self-determination, and cultural life and its physical objects,[78] their destruction deprived the members of the KP of these fundamental rights.

34. The deprivation must have been severe.[79] To determine the severity, the Court must evaluate the gravity of a case.[80] For this purpose, the acts must be scrutinised in their context and with consideration of their cumulative effect.[81] In the present case, artefacts have been destroyed for years, and their possession has been criminalised.[82] The destruction of the ruins is a cumulative addition to the attempt to destroy all artefacts from the Tirosh era. Therefore, the deprivation of the fundamental right to self-determination, and cultural life and its physical objects is also severe.

ii) The protesters were targeted because they were members of the KP

35. For an act to constitute persecution, the victims must have been targeted by reason of the identity to a group.[83] The Court found this requirement to be fulfilled in cases involving attacks on protesters, when the attacks were executed with awareness of the protesters' political affiliation.[84]

36. The KP was founded in response to the destruction of artefacts from the ancient Tirosh city and the criminalisation of their possession and sale.[85] Mr Strong explicitly ordered to "forcibly clear out the Karaxis protesters".[86] Subsequently, he also referred to combating "these terrorists" with "deadly force".[87] Considering that the KP as a whole was classified as a "terrorist organization",[88] the term "terrorists" can only refer to the individuals affiliated with the KP and not merely to protesters in general. Only members of the KP were present at the archaeological site on 7 June.[89] Additionally, the protesters wore armbands,[90] thereby distinguishing themselves as members of the group. Therefore, the defendant did not only perceive that all protesters were members of the KP but targeted them specifically because they were members of the KP.

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[78] *Al Mahdi* Reparations [14].
[79] EoC, art. 7(1)(h)(1).
[80] Policy on the Crime of Gender Persecution, December 2022, The Office of the Prosecutor, <https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf> accessed 1 March 2024 [40].
[81] *Ntaganda* Judgment [992].
[82] UNESCO Report (2022) [4].
[83] EoC, art. 7(1)(h)(2).
[84] *Prosecutor v. Laurent Gbagbo* (Decision on the confirmation of charges against Laurent Gbagbo) ICC-02/11-01/11-656-Red (12 June 2014) [40]; *Prosecutor v. Dominic Ongwen* (Trial Judgment) ICC-02/04-01/15-1762-Red (4 February 2021) [2737].
[85] UNESCO Report (2022) [4, 5].
[86] *Ibid.* [7].
[87] *Ibid.*
[88] *Ibid.* [5].
[89] *Ibid.* [7].
[90] *Ibid.*

iii) Such targeting was based on discriminatory grounds

37. The targeting of the members of the KP was based on political grounds. The CAH of persecution requires that the victims were targeted based on discriminatory grounds enumerated in art. 7(1)(h) RS.[91] The Court found that victims were targeted on political grounds when the perpetrator had the knowledge that the civilians targeted would be those considered to be supporters of a political group.[92] Factors the Court considered were the perpetrator's awareness of the use of heavy weaponry, that the actions would cause harm, the use of force to commit violence against the victims, and the fact that the conduct stretched over the course of several months.[93]

38. Mr Strong ordered the construction workers to use explosives and bulldozers to demolish the archaeological site and bury it.[94] Additionally, Mr Strong ordered "heavily armed" personnel to "forcibly clear out the Karaxis protesters" and to use "deadly force" against "these terrorists".[95] Furthermore, the PM ordered to destroy all ancient artefacts and heritage over the course of several years.[96] In response, the party was founded to honour and protect them.[97] This demonstrates that the destruction had already inflicted harm upon them, persisting over a span of several years. Mr Strong was aware of the significance of the ruins to the members of KP, underscored by their willingness to sacrifice their lives for it. The ruins were one of "the most significant archaeological finds in the past 100 years"[98] and the "world's greatest archaeological discovery in a century"[99]. The UNESCO communique informed Mr Strong about the value of the ruins and recommended to preserve it.[100] Therefore, their destruction represents the ultimate harm that can be inflicted upon the members of the KP, impacting not only those who were present but also the over 100,000 members.

39. This indicates that Mr Strong was aware that all civilians targeted were those affiliated with the KP. In fact, he instructed the forces to target them and to employ a high level of violence, aiming for their attack and elimination precisely because they were members of the party. Additionally, he was not only aware of the significance of the ruins but also of the harm their destruction would

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[91] EoC, art. 7(1)(h)(3); *Ongwen* Judgment [2736].
[92] *Prosecutor v. Charles Blé Goudé* (Decision on the confirmation of charges against Charles Blé Goudé) ICC-02/11-02/11-186 (11 December 2014) [164].
[93] *Gbagbo* Charges Decision [250].
[94] UNESCO Report (2022) [7].
[95] *Ibid.*
[96] *Ibid.* [4].
[97] *Ibid.* [5].
[98] *Ibid.* [1].
[99] *Ibid.* [6].
[100] *Ibid.*

inflict on all the members of the party. Hence, the targeting of the members of the KP was based on political grounds.

b) The contextual elements are met

40. The contextual elements are met as (i) there was an attack directed against a civilian population, (ii) the attack was systematic, and (iii) the conduct was part of the attack.

i) There was an attack directed against any civilian population

41. In order to constitute the CAH of persecution, there must be an attack against a civilian population.[101] The civilian population can constitute a group defined by its perceived political affiliation.[102] An attack is a course of conduct involving the multiple commission of acts referred to in art. 7(1) RS pursuant to or in furtherance of a state or organisational policy.[103] The Court defined an attack as "planned, directed or organised […] as opposed to spontaneous or isolated acts of violence" and as following a regular pattern.[104]

42. The KP is a political opposition group comprising more than 100,000 Siraxans, all dedicated to the same political objective: the preservation of ancient Tirosh artefacts.[105] Over the course of four years in Sirax, numerous attempts have been made to obliterate all artefacts, accompanied by legal prohibitions against their possession or sale.[106] The party has been labelled as a "terrorist organisation", with political participation banned and membership criminalised as a terrorist offence punishable by up to five years in prison.[107] Mr Strong gave orders to demolish the ruins.[108] To carry out this action, the defendant deployed several thousand heavily armed personnel.[109] Therefore, these acts were not spontaneous acts of violence but rather carefully planned and organised operations against the Karaxis protesters, following the country's regular pattern of discriminating against the members of the KP.

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[101] RS; art. 7(1).
[102] *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali* (Decision on the Confirmation of charges) ICC-01/09-02/11-382-Red (23 January 2012) [110].
[103] RS; art. 7(2)(a).
[104] *Prosecutor v. Jean-Pierre Bemba Gombo* (Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo) ICC-01/05-01/08-424 (15 June 2009) [81].
[105] UNESCO Report (2022) [5].
[106] *Ibid.* [4].
[107] *Ibid.* [5].
[108] *Ibid.* [7].
[109] *Ibid.* [8|.

ii) The attack was systematic

43. This attack must have been systematic or widespread.[110] By holding that the fighting was limited to two days at a single geographic site,[111] the PTC only refers to the geographical and temporal scope. Both only address the extent of the attack's widespread nature.[112]

44. The term "systematic" pertains to the "organised nature of the acts of violence and to the improbability of their random occurrence".[113] The Court found an attack against protesters systematic when it was prepared, planned, and coordinated, when there was a clear pattern of violence directed at the protesters. More generally, when incidents occurred in locations where supporters of the political group were present.[114]

45. The defendant ordered the demolition of the ruins.[115] More specifically, he ordered city construction workers to use explosives and bulldozers.[116] Additionally, he ordered the deployment of heavily armed security personnel to "clear out" the members of the KP, he authorised the use of force, and even deployed reinforcement in the night from 8 to 9 June.[117] In total, around 3500 municipal security forces armed with rapid fire assault rifles and rocket propelled grenades were involved.[118] Only members of the KP were present at the archaeological site.[119] This indicates not only prior preparation, but also precise planning and coordination as well the clear direction of the use of violence against the present members of the KP. Therefore, the attack was systematic.

iii) The conduct was part of the attack

46. The conduct must be committed as part of the attack.[120] The perpetration of an act referred to in art. 7(1) RS can constitute the attack itself.[121] As previously stated, the destruction of the ruins is

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[110] RS, art. 7(1).
[111] Case Facts [18].
[112] *Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute) ICC-01/09-01/11-373 (04 February 2012) [176, 177]; *Bemba* Judgment [163].
[113] *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (Decision on the confirmation of charges) ICC-01/04-01/07-717 (30 September 2008) [394].
[114] *Blé Goudé* Charges Decision [132].
[115] UNESCO Report (2022) [7].
[116] *Ibid.*
[117] *Ibid.* [7, 8].
[118] *Ibid.* [7].
[119] *Ibid.*
[120] RS, art. 7(1).
[121] *Bemba* Charges Decision [75].

an act of persecution and together with the attack on the protesters it constitutes an attack in sense of art. 7(1) RS.

47. Even if the destruction were not to be considered as the attack in itself, it would still be part of the attack on the Karaxis protesters. On 7 June, Mr Strong ordered the destruction of the ruins, and by 8 June dozens of bulldozers were already in operation.[122] This implies that the destruction commenced on 7 June or at the latest on 8 June. Given that the ruins form an "extensive complex of buildings, roads, and monuments",[123] they do not constitute a single structure that could be demolished within a few hours. Consequently, their destruction would require several days. Furthermore, the UNESCO report states that "the demolition of the ruins resumed the next day".[124] One can only *resume* work that has already started; therefore, the destruction had already started. As the fighting took place from 8 to 9 June and the destruction of the ruins started at latest on 8 June already before the protestors came, the destruction took place as part of the attack. Therefore, the contextual elements are met. Consequently, there are substantial grounds to believe that the defendant committed the CAH of persecution under art. 7 RS.

III) THE PTC ERRED IN HOLDING THAT THE DEFENDANT WAS NOT FIT TO STAND TRIAL UNDER ART. 64(2) RS AND RULE 135 RPE

48. The PTC erred in holding that the defendant was not fit to stand trial, as (1) the AC should not be satisfied that the accused is unfit to stand trial and (2), in any event, the proceedings should be postponed, not terminated.

1) The AC should not be satisfied that the accused is unfit to stand trial

49. The evidentiary standard for fitness to stand trial corresponds to the wording of rule 135(4) RPE: the Chamber must be satisfied that the accused is unfit to stand trial.[125] In the present case, the AC should not be satisfied that the accused is unfit to stand trial as (a) Dr Baleron's evaluation should be corroborated, (b) the duration and extent of Dr Baleron's evaluation are insufficient, and (c) Dr Baleron's report should be disregarded as it contains incorrect information.

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[122] UNESCO Report (2022) [7].
[123] *Ibid.* [6].
[124] *Ibid.* [8].
[125] Rules of Procedure and Evidence, 2019, ICC-PIOS-LT-03-004/19_Eng, rule 135(4); *Prosecutor v. Laurent Gbagbo* (Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court) ICC-02/11-01/11-286-Red (2 November 2012) [56].

a) Dr Baleron's evaluation should be corroborated

50. This Court and other international tribunals have consistently evaluated defendants' fitness through panels consisting of several experts and not of a sole psychiatrist. In *Al Hassan*, the Court appointed three experts to evaluate the defendant's fitness.[126] The Court aimed to appoint a panel of experts with balanced and complementary experience.[127] Furthermore, the panel used different approaches in the examination in order to evaluate the coherence of the information gathered by each expert.[128] The Court appointed three experts with different fields of expertise in *Gbagbo.*[129] In *Abdel Kani,* the panel consisted of two experts, and the Court stressed the possibility to expand the panel if needed.[130] Two experts were also appointed in *Ongwen*.[131] In *Strugar* the ICTY based its decision on the reports of one Defence expert together with three Prosecution experts,[132] while in *Gvero* four experts conducted the evaluation.[133] In *Kovačević* two experts were appointed.[134] Additionally, the ECCC appointed five experts in *Ieng Thirith*,[135] while in *Ieng Sary* it appointed two psychiatrist and one geriatrician.[136] Lastly, this practice is also confirmed by the East Timor Tribunal in *Nahak*, where two experts examined the defendant.[137]

51. Mr Strong was evaluated by a single expert, Dr Baleron, and the PTC's decision on his unfitness relies solely on her report.[138] The criteria of balance and complementarity of expertise that the Court valued when forming a panel fail in a panel that only includes one expert. A single

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[126] *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (Decision appointing experts for the purpose of a medical examination pursuant to Rule 135 of the Rules of Procedure and Evidence) ICC-01/12-01/18-1006-Red (24 March 2021) [9, 31].
[127] *Ibid.* [29].
[128] *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (Decision on Mr Al Hassan's ongoing fitness to stand trial) ICC-01/12-01/18-1467 (10 May 2021) [65].
[129] *Gbagbo* First Fitness Decision [4].
[130] *Prosecutor v. Abdel Kani* (Decision Appointing Experts for the Purpose of a Medical Examination pursuant to Rule 135 of the Rules of Procedure and Evidence) ICC-01/14-01/21-630-Red (24 August 2023) [31, 32].
[131] *Prosecutor v. Dominic Ongwen* (Decision on the Defence Request to Order a Medical Examination of Dominic Ongwen) ICC-02/04-01/15-637-Red (16 December 2016) [1]; *Prosecutor v. Dominic Ongwen* (Defence Request for a Stay of the Proceedings and Examinations Pursuant to Rule 135 of the Rules of Procedure and Evidence) ICC-02/04-01/15-620-Red (5 December 2016) [1].
[132] *Prosecutor v. Pavle Strugar* (Decision re the defence motion to terminate proceedings IT-01-42-T (26 May 2004) [12, 15, 40].
[133] *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, Milan Gvero, Vinko Pandurević* (Decision on request to terminate appellate proceedings in relation to Milan Gvero) IT-05-88-A (16 January 2013) [8-11]
[134] *Prosecutor v. Vladimir Kovačević* (Decision on Accused's Fitness to Enter a Plea and Stand Trial) IT-01-42/2-I (12 April 2006) [5].
[135] *Prosecutor v. Ieng Thirith* (Decision on Ieng Thirith's fitness to stand trial) 002/19-09-2007/ECCC/TC(E138) (17 November 2011) [1].
[136] *Prosecutor v Ieng Sary* (Decision on accused Ieng Sary's fitness to stand trial) 002/19-09-2007/ECCC/TC (26 November 2012) [3, 5].
[137] *Deputy General Prosecutor for Serious Crimes v. Josep Nahak* (Findings and order on defendant's Nahak's competence to stand trial) 01A/2004 (1 March 2005) [72, 82].
[138] Case Facts [18].

evaluation is therefore insufficient to rule on the defendant's fitness to stand trial. Nothing in this case provides a reason to depart from the approaches of previous cases of this Court. Consequently, Dr Baleron's report requires corroboration by other experts' evaluations in order to do justice to what constitutes a consistent practice of this Court and international tribunals.

b) The duration and extent of Dr Baleron's evaluation are insufficient

52. Dr Baleron's evaluation lasted two hours and consisted of a single meeting.[139] The duration and extent of this evaluation are insufficient for the Court to declare the defendant unfit to stand trial. Previous proceedings before this Court demonstrate that the average duration of psychological and medical assessment of defendants' fitness significantly exceeds two hours or, in any case, one meeting.

53. In *Al Hassan*, the defendant was interviewed in person for eleven hours and thirty minutes by two experts, and an additional four hours and twenty minutes by another expert via telephone,[140] for a total of fifteen hours and fifty minutes. In *Gbagbo*, the defendant was first evaluated via four meetings, for a total twelve hours, by only one of the several experts,[141] while another expert conducted a lengthy interview lasting several hours.[142] In *Ongwen*, the defendant was declared unfit after "many meetings" with the experts.[143] Further, the ECCC evaluated defendant's Ieng Sary's fitness via four interviews.[144]

54. Dr Baleron's evaluation of merely two hours and its limited extent of one single meeting is gravely insufficient when compared to the average time and number of meetings demonstrated by this Court. Her report fails to demonstrate what differentiates this case from the previous cases where an evaluation of the fitness of defendants required extensive examination. Considering the impactful implication that such a conclusion of permanent unfitness has on the adjudication of serious international crimes, it is insufficient to evaluate Mr Strong for such a short time.

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[139] Report of Dr Meley Baleron, Court Appointed Psychiatrist (21 August 2022) [4].
[140] *Al Hassan* Fitness Decision [65].
[141] *Gbagbo* First Fitness Decision [78].
[142] *Ibid.* [99].
[143] *Ongwen* Medical Examination Decision [1]; *Ongwen* Rule 135 Request [76].
[144] *Sary* Fitness Decision [3].

c) Dr Baleron's report should be disregarded as it contains incorrect information

55. Dr Baleron labels the defendant's impairment as "short-term memory loss".[145] According to her report, this implies the loss of memory of his past several years, including the events of June 2021.[146] However, short term memory relates to the retention of information for approximately thirty seconds.[147] Long-term memory is instead the record of past events.[148] Therefore, not retaining memory of past several years, as in the present case, constitutes long-term memory loss. Consequently, the symptoms that Dr Baleron describes indicate a loss of long-term memory, which is, however, labelled as short-term amnesia. The diagnosis is therefore unclear.

56. This Court has already disregarded experts' evaluations for mistakes that had a significantly smaller impact on the determination of fitness. In *Gbagbo*, a report concluding that the defendant was unfit to stand trial was disregarded by the Court.[149] The Chamber disregarded the report simply because the expert based the evaluation on a comparison between the defendant's capacities at the moment of the examination and his capacities in the past.[150] In the present case, there is uncertainty about the diagnosis itself. As experts' reports have been disregarded merely for the consideration of past capacities, a report containing such a serious error cannot be relied on by this Court.

57. Dr Baleron's mistake in labelling the memory impairment is particularly serious as a determination of whether Lionel Strong is suffering from short-term memory loss or long-term memory loss has significant implications for the defendant's fitness itself. In fact, if the defendant were to be suffering from short-term memory loss, it is likely that such memory loss resulted from the temporary side-effects of the medications he was prescribed after the stroke, specifically diazepam.[151] If so, the memory loss would have reversed by this time, rendering the defendant fit to stand trial.

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[145] Baleron Report (2022) [3].
[146] *Ibid*. [3, 4].
[147] M Cascella and Y Al Khalili, 'Short-Term Memory Impairment' (Statpearls, 2023) <https://www.ncbi.nlm.nih.gov/books/NBK545136/> accessed 15 February 2024, p. 3083.
[148] N Cowan, 'What are the differences between long-term, short-term, and working memory?' (2008) 169 Progress in Brain Research (Author manuscript) p. 324.
[149] *Gbagbo* First Fitness Decision [86].
[150] *Ibid.* [85, 86].
[151] Baleron Report (2022) [3], Diazepam (2022). Medical leaflet, p.2.

58. Diazepam includes amnesia among its side effects.[152] Patients treated with diazepam have been reported to specifically experience anteretrograde amnesia,[153] which is the inability to consolidate new memories.[154] Anteretrograde amnesia is linked to short-term memory loss. This is because the latter is characterised by the inability to retain information for more than a few seconds, therefore it inherently relates to the memory consolidation process. Diazepam's side-effects might last up to approximately ninety days from the administration.[155] Moreover, elderly people are likely to be more sensitive to the side-effects.[156]

59. Dr Baleron's evaluation was carried out one month after the defendant suffered the stroke and was treated with diazepam.[157] It was therefore performed within the ninety days in which a patient can experience the side-effects. Lionel Strong was 73 at the time of treatment.[158] Being elderly, as he is above 65,[159] he is likely to be more sensitive to the side-effects. Therefore, if the defendant was suffering from short-term memory loss, it is likely that while under examination he was still experiencing diazepam's temporary memory side-effects, rather than the stroke-induced amnesia. As the effects last only up to ninety days, the impairment would have reversed as of 15 May 2023,[160] and the defendant would now be fit to stand trial.

60. As suffering from short-term memory loss would render the defendant fit, the mistake made by the doctor leads to a level of such uncertainty that it does not allow the Court to determine the defendant's fitness. Accordingly, a report containing such error, also considering this Court's jurisprudence,[161] should be disregarded.

61. In Conclusion, since Dr Baleron's evaluation lacks corroboration, is insufficient in duration and extent, and contains gravely incorrect information, it should be disregarded by the Court. Consequently, the Chamber should not be satisfied that Mr Strong is unfit to stand trial.

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[152] Diazepam (2022) p.2.
[153] J L Laskin and K G Williamson, 'An evaluation of the amnesic effects of diazepam sedation' (1984) 42(11) Journal of oral and maxillofacial surgery: official journal of the American Association of Oral and Maxillofacial Surgeons 712, p. 712.
[154] C N Smith *et al.*, 'The nature of anterograde and retrograde memory impairment after damage to the medial temporal lobe' (2013) 51(13) Neuropsychologia 2709, p. 2709.
[155] C Casasola-Castro *et al.,* 'Short-term and long-term effects of diazepam on the memory for discrimination and generalization of scopolamine' (2017) 234(20) Psychopharmacology 3083, p. 3083.
[156] Diazepam (2022), p. 4.
[157] Baleron Report (2022) [3, 4].
[158] *Ibid.* [3].
[159] Institute of Medicine (US), *Medicare: A Strategy for Quality Assurance, Volume I* (ed Kathleen N. Lohr 1990), p. 69.
[160] Case Facts [18].
[161] *Supra* [56].

2) In any event, the proceedings should be postponed, not terminated

62. Rule 135(4) RPE provides that the Court shall review the case every 120 days. Never reviewing the case by way of termination of the proceedings constitutes a deviation from the initial standpoint of the rule. The jurisprudence confirms that proceedings must be adjourned until the obstacle ceases to exist.[162] Additionally, termination of proceedings may constitute an incentive for the defendant to embellish the symptomatology that led to the declaration of unfitness.[163] Therefore, in the event of the defendant being declared unfit to stand trial, the proceedings should be postponed, not terminated, and his condition should be reviewed periodically.

63. The consistent practice of international tribunals upon unfitness is to postpone proceedings, and not to terminate them. Even in cases of progressive mental impairments leading to unfitness, proceedings were not terminated but merely adjourned. In *Kovačević,* the defendant suffered from paranoid psychosis of progressive nature.[164] He was declared unfit to stand trial as he lacked the capacities to plead, understand the nature of charges, instruct counsel, and understand the consequences of proceedings.[165] Nonetheless, proceedings against him were not terminated, but merely postponed.[166] In *Thirith,* the defendant suffered from degenerative memory loss.[167] Despite the illness being degenerative,[168] which rendered improvement virtually impossible,[169] the Court merely ordered a stay of proceedings.[170] Even after all possible remedies to the impairment had proven unsuccessful,[171] the proceedings were still not terminated, and the Chamber undertook to consult the experts annually.[172]

64. Even in *Thirith*, proceedings were not terminated even though she was unfit due to memory loss, like Mr Strong, but in the form of a degenerative illness allowing for virtually no form of improvement. Therefore, even the slightest possibility of improvement over time is reason for the Court to review the case. Such possibility has not been tested in this case. Additionally, the only

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[162] *Al Hassan* Experts Decision [33]; *Gbagbo* First Fitness Decision [43]; *Abdel Kani* Experts Decision [34].
[163] I Freckelton and M Karagiannakis, 'Fitness to Stand Trial under International Criminal Law: Challenges for Law and Policy' (2014) 12 Journal of International Criminal Justice 705, p. 728.
[164] *Prosecutor v. Vladimir Kovačević*, (Decision on Appeal against Decision on Referral Under Rule 11bis) IT-01-42/2-AR11bis.1 (28 March 2007) [24].
[165] *Kovačević* Fitness Decision [45].
[166] *Ibid.* [50].
[167] *Thirith* Fitness Decision [59, 70].
[168] *Ibid.*
[169] *Prosecutor v. Ieng Thirith* (Decision on reassessment of accused Ieng Thirith's fitness to stand trial following Supreme Court Chamber decision of 13 December 2011) 002/19-09-2007/ECCC/TC(E138/1/10) (13 September 2012) [29].
[170] *Thirith* Fitness Decision [61].
[171] *Thirith* Reassessment Decision [24].
[172] *Ibid*. [39].

evidence indicating that Mr Strong's amnesia has no possibility of improvement is one single report, where such condition is merely said to be "likely" to be permanent.[173] Therefore, no ground exists to drastically depart from established jurisprudence, under which proceedings are terminated only upon death of the defendant,[174] and not upon unfitness. The present case cannot be equated to the lack of jurisdiction following the death of an accused. Consequently, proceedings against Mr Strong should not be terminated and his condition should be reviewed periodically.

[173] Baleron Report (2022) [3, 5].
[174] *Prosecutor v. Rasim Delić* (Decision on Outcome of the Proceedings) IT-04-83-A (29 June 2010) [8]; *Prosecutor v. Eliézer Niyitegeka* (Decision Dismissing a Request) ICTR-96-14-T (13 April 2018) pp. 1-2.

SUBMISSIONS

Having presented all arguments, the OTP respectfully requests the AC to

1. Dismiss the PTC XV's Decision, and

2. Declare that
    a. The PTC erred in holding that the Court does not have jurisdiction.
    b. The PTC erred in holding that there were no substantial grounds to believe that the defendant committed attacks on historic monuments in a NIAC under art. 8(2)(e)(iv) RS or the CAH of persecution under art. 7 (1)(h) RS.
    c. The PTC erred in holding that the defendant was not fit to stand trial, and

3. Order further evaluation of the defendant's condition in order to re-assess his fitness to stand trial.

Respectfully submitted,

OFFICE OF THE PROSECUTOR