

**IN THE INTERNATIONAL CRIMINAL COURT**  
**PRE-TRIAL CHAMBER I**

**Prosecutor v. General R. Stun**

**A. INSTRUCTIONS**

- 1 *Proceedings*: The hearing takes place pursuant to Article 61 of the ICC Statute (confirmation of charges). At this stage, the Prosecutor has to “support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged.” The Accused may “object to the charges” and/or “challenge the evidence presented by the Prosecutor”.
- 2 For the purpose of the moot, the hearing comprises a main speech and a rebuttal for the Prosecution and a main speech and a surrebuttal for the Defence (see Moot Rule 12).
- 3 *Facts and evidence*: The case is entirely fictional. The Moot problem includes all the facts supported by evidence that have been transmitted to the Defence, as well as facts and evidence presented by the Defence for the purpose of the hearing. Teams should confine themselves to the facts supplied. Neither the Prosecutor nor the Defence may introduce new evidence or facts at the hearing (Article 61 (6) (c) of the ICC Statute is not applicable). Teams may nonetheless draw reasonable inferences from the facts. They may also question the credibility or weight of the evidence. Teams should not hand anything to judges unless specifically asked to by a judge.
- 4 *Procedure*: The problem is not intended to raise questions of procedure other than the rights of the accused pursuant to Articles 66 and 67 of the ICC Statute. Any other procedural questions should be ignored.
- 5 *Jurisdiction and admissibility*: Counsels may, if relevant, address any issue regarding the admissibility of the case.
- 6 *Applicable law*: In accordance with Article 21 of the ICC Statute:

*The Court shall apply*

- a) *In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;*

- b) *In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;*
- c) *Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.*

*The Court may apply principles and the rules of law as interpreted in its previous decisions.*

8 Teams are encouraged to look at the case law of international and national courts. If teams rely on decisions of national courts, these should be leading decisions and teams should expect to be asked for copies of the headnote and the portion of the transcript or judgment referred to in their argument.

9 *Participation to treaties:* At all material times, the following treaties were in force for the States indicated (✓):

1 - 1949 Geneva Conventions

2 - 1977 Additional Protocol I

3 - 1977 Additional Protocol II

4 - 1998 Statute of the International Criminal Court

5 - 2008 Convention on Cluster Munitions

6 - 2006 International Convention for the Protection of All Persons from Enforced Disappearance

7 - 1969 Vienna Convention on the Law of Treaties

	1	2	3	4	5	6	7
<b>Minos</b>	✓	✓	✓	✓		✓	✓
<b>Paros</b>	✓	✓			✓		✓
<b>Rios</b>	✓	✓	✓	✓	✓		✓
<b>Andros</b>	✓	✓	✓	✓	✓		✓
<b>Lemmos</b>	✓	✓	✓	✓	✓		✓
<b>Bassos</b>	✓	✓	✓	✓	✓		✓

## B. FACTS

1. The Republic of Minos is about 400'000 km<sup>2</sup> with a population of 55 million inhabitants. It lies on the south shore of the Pelos Sea. It shares border with five other States: Andros on the west side, Lemmos, Rios, and Bassos to the south, and Paros on the east side.
2. In the last decades there have been regular border incidents between Minos and its neighbours, in particular with Paros. On several occasions, Minos forces, seeking to push the boundary eastwards by moving boundary markers, patrolled into Paros territory and occasionally fired at border patrols on the pretext that the patrol has entered Minos territory. On two occasions, such incidents had led to short period of military hostilities.
3. Paros is the most powerful member – and the centre of gravity - of a regional military alliance (UASO) that comprises Paros, Andros, Lemmos, Bassos and Rios. The alliance has been established in 1989 in part to contain Minos' expansionism which has some claims over part of the territory of three of them, notably Paros, Andros and Lemmos. Under the UASO Charter, member States undertake to put at each other disposal some of their military installations. In that framework, Rios has put at the disposal of Alliance's members two airfields near the Minos border.
4. Minos, which has had authoritarian governments since World War II, has experienced civil unrest in recent months which have been ruthlessly repressed. Active resistance to the government began in February 2009. In Mata, a large city in the western part of the country, after three days of anti-governmental protests, security forces had killed fourteen protesters. Crowds of protesters threw rocks at billboards of Minos' President, and troops attacked them with tear gas and fired live ammunition. In the following days, clashes erupted at a funeral procession where demonstrators threw rocks at security forces, which then used live ammunition, killing twenty protesters. A resident claimed that armed security forces were positioned on rooftops surrounding the central square where protesters were gathering. Two of the policemen who had participated in the clash were caught and hanged by protesters. Unrest spread to nearby towns in the western part of the country, local militias taking over government buildings. Within a few days, protesters around the city and in nearby towns attacked and overwhelmed government security and police forces, while some police and army units defected and joined the protesters. By mid-February, Mata was almost entirely in opposition hands, with the only place still housing a significant number of government forces being a military compound.

5. The National Security Council (NSC) is a consultative body chaired by the President of Minos, Mr N. Goodfellow. The NSC, composed of senior national security advisers and some Cabinet ministers, is the principal forum that is mandated for considering national security and foreign policy matters. Its functions are to advise and assist the President on national security and foreign policies. It has been often criticized for expanding the role and influence of military and security circles in the nation's public affairs, bypassing both the Cabinet of Ministers and Parliament. When it comes to national security issues, the NSC in reality takes a decision-making role. The President, the Principal Presidential Adviser, the Minister of Interior, the Head of the National Intelligence Agency (NIA) and the General Chief of Staff form the Bureau of the Council, within which decisions are taken collectively. The President signs all decisions taken by the Council.
6. The General Chief of Staff of the Minos Armed Forces (MAF) is General R. Stun. General Stun is Minos's most highly decorated military officer renowned for his bravery and military science. As General Chief of Staff, he leads the Joint Command of the country's land, naval and air forces. He reports exclusively to the Presidency. General Stun is also chair of the National Defence Research and Development Council (NDRC), a body charged in particular with the development of weapons and military technology. One of the main successful project carried under the auspices of the NDRC was the development of computer software that enable military unmanned aerial vehicles (UAV or drones) to carry out autonomous missions.
7. On 19 February, 350 mercenaries recruited by the Ministry of Interior were airlifted to Mata and other towns, but they were met with retaliatory attacks by opposition forces. Fifty mercenaries were killed by protesters, with some being locked up in a police station which was then burned down. Fifteen were lynched in front of the Mata courthouse. Meanwhile, opposition forces commandeered bulldozers and tried to breach the walls of the Mata military compound. As the fighting continued, a mob attacked an army base on the outskirts of Mata and disarmed the soldiers. Among the equipment confiscated were three small tanks, which were rammed into the compound. Another fifty people had been killed during the previous twenty-four hours of fighting.
8. On 23 February, after five days of fighting, government forces had been completely driven out from Mata. The following day, government forces attempted to retake the airport, but were driven back. Officers from a nearby Air Force Academy also mutinied and helped the opposition attack an adjacent military airbase, and then disabled fighter jets at the base. By the end of February, the opposition had taken control over a significant part of the western part of the country, including Mata and surrounding towns, as well as the two important harbours on the coast, Sarona and Tessa.

9. In Brig, the largest city of the southern part of the country, clashes between pro and anti-government demonstrators took place in the centre of the city during the same week, according to international news channels Al-Jazeera, CNN & BBC World News. Order was however quickly re-established. Brig's population, which benefitted from important investments from the central government, notably in the textiles industries, was supportive of the government. The city also houses a large number of migrant workers, notably from Rios, who work in the region flourishing industries.
10. After deliberations, the NSC Bureau decided on 5 March to launch a counteroffensive, trying to retake the two ports, and pushing towards Mata. Airstrikes by the Minos Air Force hit an airbase in the port held by the opposition, killing at least two and injuring forty. At the same time, government's forces attempted an attack on Mata and managed to get as far as the centre of the city before their attack was halted by opposition forces, and they retreated to the city's outskirts. Government forces also attempted to take nearby towns, sending infantry and armour. In a subsequent battle, some seventy rebels and civilians and twenty-two government soldiers were killed in the town of Oma some 25 kilometres northeast of Mata.
11. Thousands of residents in arrears controlled by government forces were subsequently questioned, with government forces reportedly arresting anyone on the slightest suspicion of sympathy for the opposition. However, small teams of rebels continued to operate, launching hit-and-run attacks against government forces, reportedly killing dozens of soldiers. On 12 March 2009, government forces launched another attack against Mata led by an elite brigade, while tank shelling hit the city. The attack stalled, however, after thirty-two soldiers, reportedly including a general, defected and joined the rebels.
12. Uri, 30 kilometres north of Mata and the last opposition-held town before Mata, had been subjected to government airstrikes for three days. General Stun moved the 1<sup>st</sup> Artillery Regiment to Uri commanded by Colonel Brown. On 15 March, Colonel Brown ordered rolling artillery barrages coupled with airstrikes and naval shelling against the town, after which they attacked and broke through rebel defences. International media outlets reported the rolling artillery barrages had destroyed a prominent hospital. The United Nations Secretary-General spoke critically of Colonel Brown's lack of discrimination in targeting. General Stun was reported as saying the destruction of the hospital was unfortunate but understandable considering the nature of the fighting. After encircling the town, tanks were sent into the town centre. After a few hours, the town was under government control, but armoured forces pulled back to the outskirts to avoid surprise attacks, although the shelling continued. On 16 March, fighting continued. Rebel reinforcements from Mata managed to create a small corridor through the

government blockade despite resistance by government forces, while they also managed to take the northern entrance to the town.

13. On 17 March, the UASO Council passed a resolution which read in part:

The UASO Council,

[...]

*Expressing* grave concern at the deteriorating situation in Minos, the escalation of violence, and the heavy civilian casualties,

*Condemning* the violence and use of force against civilians, and deploring the gross and systematic violation of human rights, including arbitrary detentions and enforced disappearances,

*Reiterating* the responsibility of the authorities of Minos to protect its population and reaffirming that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians,

*Considering* that the widespread and systematic attacks currently taking place in Minos against the civilian population may amount to crimes against humanity and war crimes,

*Expressing* its resolve to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel,

*Stressing* that those responsible for such serious abuses and violations, including by forces under their control, must be held accountable, and *recalling* the jurisdiction of the International Criminal Court over crimes of concern to the international community as a whole,

1. *Calls upon* the Minosi authorities to comply with their obligations under international law, including international humanitarian law and human rights, and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance;
2. *Also calls upon* the members of the international community, acting nationally or through international organizations, to take the necessary measures to protect civilians and civilian populated areas under threat of attack in Minos.

[...]

14. On 18 March, the Minos' government declared an immediate ceasefire, but on the following day, artillery and sniper attacks on Uri and other towns continued, and government forces continued approaching Mata. Government forces entered Mata with tanks on 21 March from the west and south while hundreds fled the fighting. Opposition forces managed to beat back the assault after several hours of fighting, claiming to have inflicted losses, including on heavy armour, but confirmed that they suffered casualties.

15. The Minos government was widely reported to have cut off water, electricity and communications in rebel-held Mata, forcing residents to rely on wells. The government denied the claims, stating supplies were disrupted due to the fighting.

16. After informing the UASO Council, on 22 March, nineteen Paros Air Force aircraft entered Minos airspace to begin reconnaissance missions, and flew over Mata to prevent any attacks on the opposition-controlled city. In the evening, a Paros jet destroyed a government vehicle. Shortly afterward, an airstrike destroyed four tanks southwest of Mata. Three Paros stealth bombers flew from Rios to drop bombs on a major Minos airfield, while Parosi UAV searched for Minos ground forces to attack.
17. The Paros government's spokesperson in a press conference justified the strikes on the basis of "Paros' sacred duty to uphold principles of humanity and stop and prevent attacks against civilians". Given the lack of concrete action of the international community to put a stop to the grave violations by the Minos government of its duty to respect and protect civilians. The spokesperson made it clear that operations would continue until all attacks and threats against civilians had ceased, until all of Minos government forces had withdrawn to their bases, and until there was unhindered access to humanitarian aid to all those who need it.
18. The Paros government also issued a statement stating that "all targets are military in nature and have been clearly linked to the Minos government's systematic attacks on the population and populated areas. Strikes are planned and conducted with great deliberation to minimize the risk to innocent people."
19. Minos State Television reported that Minos government forces had shot down a Paros warplane over Brig on 19 March, a claim denied by Paros. On 20 March, several medium-range, air-to-surface missiles were launched against Minos targets by Paros jets. A government convoy south of Mata was targeted. At least seventy vehicles were destroyed, and ground troops sustained multiple casualties. Strikes also took place on a military compound.
20. It became known that Rios had allowed Paros' warplanes and UAVs to use its air base near the Minos border in support of Paros' military intervention. In diplomatic exchanges between Minos and Rios, the Minos government enjoined the Rios government to refrain from supporting Paros illegal attacks on Minos. It also stated that thousands of Riosi nationals were working in Minos' textiles industries in the southern part of the country, which provided substantial revenues for Rios and its population. There could be "serious consequences" to the support provided by Rios to the attacks on Minos.
21. On 21 March, following MAF intelligence reports suggesting the rebels were going to use the ports of Tessa and Sarona for resupply, General Stun ordered the 1<sup>st</sup> Artillery Regiment to the hills behind Sarona and the 2<sup>nd</sup> Artillery Regiment to near Tessa.

22. The Andros government chartered the ferry "Poseidon", a passenger ferry usually servicing the line between the port of Hores (Andros) to the ports of Tessa (the closest to Andros) and Sarona to deliver medical supplies and emergency food rations and evacuate wounded victims of the hostilities in Mata and Uri. The Poseidon had been quickly converted into a "hospital ship." Large red cross emblems were painted on the port and starboard sides at midship below the main deck. A red cross flag was attached to the mast forward of the two funnels. The ship carried nine containers with 100 tons of humanitarian aid including medication, food packages, infant formula, milk powder, hygiene kits and clothing. Poseidon was escorted by an Andros Navy frigate. This frigate was similar to the Kortenaer class frigates produced for the Netherlands navy. Amongst other armaments it carried 2 x OTO- 76 mm/62 caliber guns and anti-aircraft weaponry. In a light breeze on a clear and sunny day Poseidon sailed from the port of Hores to the port of Sarona and at 11 am on 22 March docked starboard side alongside a wharf in the Sarona port facing the open sea. The accompanying frigate patrolled the opening to the port with guns trained horizontally fore and aft with the crew at action stations. After discharging the containers, Poseidon took on board wounded people, including injured rebels, and medical attendants, as well as families who wanted to leave the city. Midway through the boarding process with about a hundred people still to board, both ships came under artillery fire from an artillery battery on the hills behind the port on the starboard side of Poseidon. The frigate returned fire as Poseidon hastily set sail leaving dead and wounded on the dock. Observers later reported to international media outlets that the return fire from the frigate was the only reason there were not more than ten persons killed and twenty five persons injured on the dock.
23. The incident was largely reported in the international media. In Paros national media, it was presented as one more instance of the lack of respect of the Minos government for the most elementary rules of humanity. The Minos Joint Command HQ issued a communiqué stating that the conversion of the ferry into a hospital ship had not been duly notified. Moreover, the display of the red cross emblem on the ferry was unlawful as it had not been authorized by the proper authorities. In addition, the presence of the frigate in the territorial waters of Minos, without proper authorization, enabled the MAF to take all necessary measures to defend the integrity of its territory. General Stun himself explained that there was reason to believe that the ferry was transporting persons – who had actively taken part in the violence – who were either trying to escape or to join other terrorist units in Tessa. Furthermore the actions of the frigate in patrolling the entry to the harbour were hostile. The Minos Ambassador in Andros sent a protest note to the Andros government denouncing the incursion of a military ship into Minos' territorial waters without any form of notification or authorization.
24. In Southern Minos, Riosi foreign workers were accused by local authorities and media as being supporters of the anti-governmental opposition and harbouring



foreign agents and mercenaries. All residence and work visas were suspended. On 25 March, the Interior Ministry issued a directive stating that all Riosi nationals residing in Minos had to leave the country within two weeks.

25. More than 500 Riosi nationals were rounded up the following week and forcefully expelled. An international Non Governmental Organisation, in a statement released on 3 April 2009, stated that on visits to detention centres near the southern border, it was informed that between one third and half of those detained were foreigners. International media reported that in the suburbs of Brig where most Riosi nationals lived “was nearly emptied of its inhabitants in what appeared to be major reprisal for Rios’ support of Paros intervention.”
26. On 4 April, a Minos aircraft was shot down by a Paros jet as it attempted to land near Uri. Another five aircraft in the area were destroyed on the ground by an airstrike the following day. On that day, the Minos Health Ministry reported that 114 people had been killed and 445 wounded since Paros intervention. However, a Vatican official in Brig reported on 5 April that airstrikes had killed at least 40 civilians in Brig.
27. On 8 April, the NSC approved the proposal of General Stun to strike airfields in Rios. General Stun argued that, although Rios had not actively participated in the Paros air operations against Minos, it passively supported them by allowing the use of its airbases. Use of the airbases was a key element enabling the Paros Air Force to strike effectively. There was the risk that Rios would want to retaliate and then take a more active part in the operations against Minos, but its military resources were minimal in any case. General Stun suggested that short-range missiles carrying cluster munitions be used to destroy the airfields in Rios from where Paros’ drones were launched.
28. The following day, two Minos UAV carrying cluster munitions destroyed two airfields in Rios. The UAV had been recently developed by the Minos Center for Applied Science. Once launched, the UAV are completely autonomous. They set the course of their flight to reach the location of their targets, identify the objects to be targeted and the aerial defence installations protecting these if any, as well as the other objects likely to be damaged or destroyed by the attack. If damage to non-military objects is deemed to be excessive (following algorithms in their software), the drones were programmed to cancel their attack and return to their base. If attacked during their mission, they could return fire in retaliation. Following the activation of the air-missile defence system of the Rios airbase, one of the drones launched cluster bombs into a nearby residential area, killing some 50 persons.
29. From 31 March, strikes carried out by Paros continued to target Minos government ground forces, air defences and artillery in western Minos. The

strikes caused numerous material losses and casualties among government forces.

30. In Brig, coercive measures for the expulsion of Rios nationals were being implemented. The NSC issued a directive stating that all foreign nationals currently held in Brig were to be expelled immediately under the escort of the MAF. On 2 April 2009, a demonstration of around 1,500 people gathered in front of a police station in Brig to protest the expulsions. Several hours into the protest, the crowd attempted to cross the barrier into the station. The security forces responded with tear gas and water cannon, and the crowd responded by throwing rocks. Police fired into the air and then into the crowd at head height, killing eight. 250 protesters were detained at the scene; they were ordered to nearby trucks and transported to a military site. At the site, Rios nationals were grouped together and ordered back in trucks. The majority were escorted to the border on 4 April, where the Rios authorities took them in charge. An unknown number of them were transferred to an undisclosed detention centre under the authority of the Minos Ministry of Interior for further investigation. Only the NSC was made aware of that latter transfer.
31. The Rios Friendship Association, an NGO established in Brig, after investigation with the Rios community still in Minos, forwarded to the Rios authorities a list of names of 58 men and women whose whereabouts were unknown since the April 2 events.
32. On 15 May, the Rios government, through diplomatic channels, requested from Minos authorities information on the whereabouts of its 58 nationals on the list. By communiqué, Minos authorities responded that all persons momentarily detained by the Minos Armed Forces had been handed over to Rios authorities on 4 April or released. No list of persons arrested on 2 April has been established given the short duration of the detention.
33. By the end of April fighting in Minos had reached a stalemate. On 1 May the government and rebels entered into negotiations. President Goodfellow agreed to form a new government with the participation of representatives of the opposition. He also agreed to remove General Stun from his position as General Chief of Staff. General Stun retained nonetheless his seat at the NSC as presidential adviser, but not as a member of the NSC Bureau. The agreement between the President and the opposition also provided that the government would provide compensation to the families of those killed or seriously injured in relation to “unlawful acts under international law” committed during the events in Mata. In an undisclosed annex to the agreement, the President also agreed to an amnesty for all “lawful acts of war” committed since 1 February 2009.
34. The ICC was seized of the “situation prevailing in Minos, including its direct effects in neighbouring countries, since 1 February 2009” by the Rios government

on 20 August. On 1 September 2009, the Pre-trial Chamber, at the request of the Prosecutor issued a summons for General R. Stun to appear pursuant to Article 58(7) of the Statute.

35. The Prosecutor intends to seek the trial of General R. Stun **ON THE FOLLOWING CHARGES:**

#### **Count 1**

##### **Attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law**

(Article 8(2)(b)(xxiv) and Article 25 (3) (d) of the Statute)

In respect of the attack on the ship "Poseidon" on 22 March 2009 in violation of article 8(2)(b)(xxiv) and 25 (3) (d) of the ICC Statute, GENERAL R. STUN, as part of a group of persons acting with a common purpose, committed or contributed to the commission of the war crime of "intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law".

#### **Count 2**

##### **Attacks against civilian objects, that is, objects which are not military objectives**

(Article 8(2)(b)(ii) and Article 28 (a) of the Statute)

In respect of the attack on the residential area adjoining the Rios airfield on 9 April 2009 in violation of Article 8(2)(b)(ii) and 28 (a) of the Statute, GENERAL R. STUN, as a military commander or person effectively acting as a military commander, is criminally responsible for the war crime of "intentionally directing attacks against civilian objects, that is, objects which are not military objectives" committed by forces under his effective command and control.

#### **Count 3**

##### **Unlawful deportation or transfer or unlawful confinement**

(Article 8(2)(a)(vii) and Article 25 (3) (a) of the Statute)

In respect of the treatment of some 58 Riosi nationals whose whereabouts are unknown since 2 April 2009 in violation of Article 8(2)(a)(vii) and 25 (3) (a) of the Statute, GENERAL R. STUN committed jointly with another or through another person the war crime of "unlawful deportation or transfer or unlawful confinement" of protected persons.

36. On the basis of Article 19 of the Statute, the Minos government challenged the admissibility of the case against General R. Stun on the ground that the situation was being investigated and cases prosecuted. The Minos government submitted in particular that it had carried out investigations on the events that occurred since

1 February 2009, and that court-martial proceedings had been initiated against local commanders, including Colonel Brown, for the commission of war crimes.

37. The Pre-trial Chamber issued an order pursuant to Rule 58 (2) of the Rules of Procedure and Evidence to join the challenge to admissibility to the confirmation proceeding.

38. The Pre-trial now holds a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing is held in the presence of the Prosecutor and General R Stun, as well as his counsel.

### Annex: Regional map

