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MEMORIAL FOR THE PROSECUTOR

PLEADINGS

I. THE INVESTIGATIONS CONDUCTED BY THE MINOS GOVERNMENT DO NOT RENDER THE CASE INADMISSIBLE UNDER ARTICLE 19 OF THE ICC STATUTE.

In considering whether a case is admissible it must be seen if there are ongoing investigations and prosecutions in the State and only if there are such investigations or prosecutions, can the Court proceed to see whether these proceedings are "genuine".[1]

A. Insufficient evidence of *'investigation or prosecution by a State".*

The *onus probandi actori incumbit*[2] rule prescribes that the party that challenges admissibility must prove that the case is inadmissible.[3] To discharge such burden, the party "must provide the Court with evidence of a sufficient degree of specificity and probative value."[4] Herein, the only evidence provided is that the Minos Government had carried out investigations on the events that occurred since 1 February 2009.[5] Therefore, there is insufficient evidence to prove any investigation or prosecution against General R. Stun ['***Stun'***] by Minos.

B. Arguendo, such investigation does not meet the *"same person same conduct"* test.

Article 19 prescribes conditions for admissibility of a "case" as opposed to a "situation."[6] A case encompasses "specific incidents during which one or more crimes within the jurisdiction of

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[1] Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, *Judgment,* 25 September 2009, Case no. ICC-01/04-01/07 OA8, ¶78.

[2] *Informal Expert Paper: The Principle of Complementarity in Practice*, Office of the Prosecutor, Document no. ICC-01/04-01/07-1008-AnxA, p.32; JANN K. KLEFFNER, COMPLEMENTARITY IN THE ROME STATUTE AND NATIONAL CRIMINAL JURISDICTIONS, 204 (2008).

[3] The Prosecutor v Francis Kirimi Muthaura, Uhuru Mugai Kenyatta and Mohammed Hussein Ali, *Judgment*, 30 August 2011, Case no. ICC- 01/ 09- 02/11 OA, [' ***Muthaura'***] ¶61.

[4] *Ibid*; JO STIGEN, THE RELATIONSHIP BETWEEN THE INTERNATIONAL CRIMINAL COURT AND NATIONAL JURISDICTIONS: THE PRINCIPLE OF COMPLEMENTARITY, 203 (2008).

[5] Proposition, ¶39.

[6] Muthaura, ¶50, ¶54.

the Court seem to have been committed by one or more identified suspects".[7] For a case to be admissible, "it must encompass both the person and the conduct, which is the subject of the case before the Court".[8] Herein, since national proceedings only encompass the conduct of Colonel Brown and not Stun, the investigation does not fulfil the "same person same conduct" test.

C. In any event, the proceedings are being conducted to shield the accused.

Article 17(2)(a) prescribes admissibility, *inter alia,* when proceedings are being undertaken for the purpose of shielding the person from criminal responsibility. This involves an appraisal of the intentions of the state organs which are investigating or prosecuting[9] through circumstantial evidence.[10] Blanket self amnesty is direct evidence of intention to shield the accused,[11] because it results in little investigation and no prosecution.[12] Herein, the self-amnesty is extended to Stun but court martial proceedings are being conducted for individuals subordinate in the military command such as Colonel Brown,[13] thereby clearly evincing an intention to shield Stun.

Therefore, the present case is admissible.

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[7] Prosecutor v. Laurent Gbagbo, *Judgment*, 30 November 2011, Case no. ICC-02/11-01/11-9-US-Exp, ¶10.

[8] Prosecutor v. Thomas Lubanga Dylio, *Judgment*, 24 February 2006, Case no. ICC-01/04-01/06-8-Corr, ¶31.

[9] JANN K. KLEFFNER, COMPLEMENTARITY IN THE ROME STATUTE AND NATIONAL CRIMINAL JURISDICTIONS, 137 (2008).

[10] Rule 51, Rules of Procedure and Evidence, Document no. ICC-ASP/1/3 (Part.II-A); J T Holmes, *'Jurisdiction and Admissibility'* in R S LEE (ED), THE INTERNATIONAL CRIMINAL COURT—ELEMENTS OF CRIMES AND RULES OF PROCEDURE AND EVIDENCE, 337 (2001).

[11] *See,* J. Dugard, *'Possible Conflicts of Jurisdiction with Truth Commissions'* in A. CASSESE, P. GAETA AND J. R. W. D. JONES (EDS.), THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY, Vol. I, 693-704 (2002).

[12] Darryl Robinson, *Serving the Interests of Justice,* 14 EUR.J.INT'L L. 497 (2003); Richard J. Goldstone & Nicole Fritz, *"In the Interests of Justice" and Independent Referral,* 13 LEIDEN J. INT'L L. 661-62 (2000).

[13] Proposition, ¶36.

II. GENERAL R. STUN SHOULD BE TRIED FOR THE CHARGE UNDER ARTICLE 8(2)(b)(xxiv).

Substantial grounds exist when the Prosecution demonstrates a clear line of reasoning underpinning specific allegations,[14] such that it goes beyond mere theory or suspicion.[15] Herein, there are substantial grounds to believe that the attack[16] on Poseidon fulfils the ingredients of Art. 8(2)(b)(xxiv) and that Stun is individually criminally responsible under Art. 25(3)(d).

A. There was an attack on medical transport using emblem that is in conformity with international law.

i. *The Notification requirement is merely recommendatory and not mandatory.*

Herein, Poseidon was a passenger ferry converted to supply humanitarian aid. Hence, it was a "medical ship"[17] as opposed to a "hospital ship" built solely to treat and transfer the wounded, sick and shipwrecked.[18] Therefore, there existed no mandatory obligation to notify Minos Authorities.[19]

ii. *Presence of Andros Navy Frigate did not constitute an "act harmful to the enemy".*

Further, the presence of the Andros Navy Frigate did not lead to the revocation of Poseidon's immunity as it does not constitute an act "harmful to the enemy". Admittedly, hospital ships may only use deflective means of defence,[20] but there is no rule of naval warfare which obliges a

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[14] Prosecutor v. Callixte Mbarushimana, *Judgment*, 16 December 2011, Case no. ICC-01/04-01/10, ¶40.

[15] Prosecutor v. Thomas Lubanga Dyilo, *Judgment*, 29 January 2007, Case no. ICC-01/04-01/06, ['***Lubanga***'] ¶39.

[16] Article 49(1), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 ['***AP I***'].

[17] Article 23(1), AP I

[18] Article 22, Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949 ["***GC II***"].

[19] Article 23(4), AP I.

[20] LOUIS DOSWALD BECK (ED.), SAN REMO MANUAL ON INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS AT SEA (1994), ¶170 ['***San Remo Manual***'].

State to suffer illegal acts and remain passive.[21] Herein, the MAF had engaged in airstrikes and artillery attacks.[22] The presence of anti-aircraft guns and 2 x OTO- 76 mm/62 calibre guns[23] cannot be termed as "offensive" as such weapons only have offensive capability when installed on helicopters or small boats, but in the context of being mounted on a large and slow boat, its capability is greatly diminished.[24] Therefore, the presence of the Andros Navy Frigate was purely defensive and the use of the distinctive emblem was in conformity with international law. In any event, even if there was a violation of international law, the MAF were obligated to give notice of violation and a reasonable time to eliminate such violation,[25] in the absence of such notice the MAF cannot claim that the attack was lawful.

B. The Perpetrator intended such medical transport to be the object of the attack.

To establish intention, it must be proved that the consequence would occur "in the ordinary course of events"[26] and there is no requirement of explicit approval from the perpetrator.[27] Herein, the placing of an artillery regiment on suspicion of rebels entering Minos, ensured an attack on any vessel from opposing parties to the conflict.

C. The conduct took place in the context of and was associated with an international armed conflict

An armed conflict exists when there is resort to armed force between States.[28] The existence of an armed conflict must play a substantial part in the ability, decision, manner or purpose of the

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[21] W. E. M. Heintschel von Heinegg, *Current Legal Issues in Maritime Operations: Mari-time Interception Operations in the Global War on Terrorism, Exclusion Zones, Hospital Ships and Maritime Neutrality*, 80 INTERNATIONAL LAW STUDIES 207 (2012).

[22] Proposition, ¶10, ¶14.

[23] Proposition, ¶22.

[24] D. L. Grimord and G. W. Riggs, *The Unique and Protected Status of Hospital Ships under the Law of Armed Conflict*, 80 INT'L L. STUD. SER. US NAVAL WAR COL. 263 (2006).

[25] Article 34, GC II

[26] Article 30(3), Rome Statute of the International Criminal Court ['***Rome Statute***'].

[27] Prosecutor v. Drazen Erdemovic, ICTY, *Judgment*, 29 November 1996, Case No. IT-96-22, ¶17.

[28] Prosecutor v. Dusko Tadic, ICTY, *Judgment*, 7 May 1997, Case no. IT-94-1-T, ¶68, ¶70.

perpetrator in committing the crime.[29]Further, for the protection of civilians,[30] international humanitarian law continues to apply to the whole territory of the warring states irrespective of whether actual combat takes place in certain areas.[31]

Herein, there was an escalation of armed force between Minosi Armed forces ['***MAF***'] in the form of dispatching of mercenaries, air strikes and sniper strikes, thereby establishing the existence of an armed conflict. Further, when a State has a role in "organising, coordinating or planning the military actions of the military group", its intervention internationalizes the conflict.[32] Herein, Paros air force aircrafts have carried out reconnaissance missions and attacked Minosi government buildings thereby internationalizing the conflict. Further, indirect participation of other UASO member, such as Andros and Rios, has also contributed to the internationalisation of the conflict. Being the Chief of Staff, Stun was aware of the increasing hostilities that were occurring in other parts of Minos[33] making him aware of the circumstances that established the existence of an armed conflict.

D. General Stun is Individually responsible for the war crime under Art. 8(2)(b)(xxiv) of the Rome Statute under Art.25(3)(d)

General Stun contributed to the commission of the Crime committed by the 2nd Artillery Regiment.

i. *The 2nd Artillery Regiment qualifies as a group acting with a common purpose.*

A group's common purpose need not have been previously arranged and can materialise extemporaneously and inferred from the circumstances surrounding the crime.[34] Thus, given the

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[29] Prosecutor v. Dragoljub Kunarac et al., ICTY, *Judgment*, 12 June 2002, Case no. IT-96-23 & IT-96-23/1-A, ['***Kunarac***'] ¶58.

[30] Prosecutor v. Dusko Tadic, ICTY, *Judgment*, 2 October 1995, Case no. IT-94-1-AR72 ¶70.

[31] Prosecutor v. Ramush Haradinaj et al., ICTY, *Judgment*, 3 April 2008, Case no. IT-04-84-T, ¶37; Kunarac, ¶57.

[32] Prosecutor v. Dusko Tadic, ICTY, *Judgment*, July 15 1999, Case No. IT-94-1, ['***Tadic Appeal***'] ¶137.

[33] Proposition, ¶12, ¶21.

[34] Tadic Appeal, ¶227.

reason for stationing of the Regiment,[35] it is inferred that there existed the common purpose of preventing any kind of resupply at the ports of Sarona and Tessa.

ii. *General Stun contributed to the attack*

It was General Stun who, apprehending the use of the port for resupply, positioned the 2nd artillery regiment near Tessa.[36] In cases concerning instances where the offences have been committed members of a military, the requisite *actus reus* can be inferred from the position of authority and the specific functions held by each accused.[37] Thus, General Stun indeed contributed to the commission of the crime. Further, such a contribution need not be substantial.[38] Neither is it necessary that the participation of General Stun was *sine qua non.*[39]

iii. *The contribution was intentional.*

General Stun's contribution was made (a) with the aim of furthering a criminal purpose. In any case, he was necessarily knowledgeable of the intention of the group.
The sole reason for the stationing of the Regiment was to prevent the use of ports for resupply.[40] Thus, the attack at the time of the boarding was necessarily desired and thus, General Stun's contribution was specifically intentional. The intention of the group was to prevent any ship from resupplying at Tessa. In fact, General Stun who stationed the Regiment at Tessa for this specific purpose. Thus, his contribution, at the very beginning of the crime, was made with the aim of furthering a criminal purpose. In any case, the position of authority is itself indicative of the level of awareness of the common design and an intent to participate in it.[41] Further, full intent is not required to be shown in cases of liability via other contributions; it is sufficient if Stun was

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[35] Problem, ¶21.

[36] Problem, ¶21.

[37] KRIANGSAK KITTCHAISAREE, INTERNATIONAL CRIMINAL LAW, 239 (2001).

[38] WILLIAM SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 213 (3rd ed., 2007).

[39] Tadic Appeal, ¶199.

[40] Problem, ¶21.

[41] Tadic Appeal, ¶¶202-3, ¶220, ¶228.

participated with the awareness that the crime was a possible consequence of his contribution.[42] By stationing the Regiments thus, especially after a report specifically indicating the possibility of rogue ships, such an attack could have indeed been reasonably foreseeable. Thus, at any rate, his contribution was made in the knowledge of the intention of the group.

Therefore, there are substantial grounds to believe that these objective and subjective elements for the aforementioned charge against General R Stun are fulfilled.

III. GENERAL R. STUN SHOULD BE TRIED FOR THE CHARGE UNDER ARTICLE 8(2)(b)(ii).

The facts indicate "substantial grounds to believe"[43] that the activities engaged by Stun fulfill the elements of crime for the charge under Article 8(2)(b)(ii) of the Rome Statute.

A. There was an attack directed by the perpetrator.

The scope of "attack" has been outlined as "means and acts of violence against the adversary, whether in offence or in defense".[44] This concept of attack refers to use of armed force to carry out a military operation during the course of an armed conflict.[45] Herein, the defensive mechanism of the Minos drone that deployed cluster bombs into a residential area within Rios territory, killing fifty persons,[46] is an attack.

B. The object of the attack were civilians.

Civilian objects are all objects that are not military objectives.[47] Military objects are limited to those which by their "nature, location, purpose or use, make an effective contribution to

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[42] Prosecutor v. Radoslav Brdjanin, ICTY, Judgment (dissenting opinion of Judge Shahabuddeen), 19 March 2004, Case no. IT-99-36-A, ¶¶2, 4, 5; Prosecutor v. Radislav Krstic, *Judgment*, 2 August 2001, Case no. IT-98-33-T, [*'Krstic'*] ¶622.

[43] Lubanga, ¶39; Prosecutor v. Bahar Idriss Abu Garda, *Judgment*, 8 February 2010, Document no. ICC-02/05-02/09, ¶43.

[44] Article 49(1), AP I.

[45] KNUT DORMANN, ELEMENTS OF WAR CRIMES UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, 150 (2004).

[46] Proposition, ¶28.

[47] Article 52(1), AP I; Prosecutor v. Tihomir Blaskic, *Judgment*, 3 March 2000, IT-95-14-T, [*'Blaskic'*] ¶180.

military action", and whose capture or destruction offers a "definite military advantage".[48] In the present case, the cluster bombs were dropped at a *residential area* that made no contribution to the airfields in Rios. Thus, these were civilian objects.

C. The perpetrator intended for these objects to be attacked.

The threshold for mental element is that the civilian character of the objects damaged was known *or should have been known* to the perpetrator.[49] Such a standard is met when attack has been conducted intentionally with the knowledge, or when it was *impossible to not know* that civilian property was being targeted.[50] Here, Stun demonstrated "recklessness"[51] by sending an autonomous UAV that only had an algorithm to determine if the damage would be *excessive*.[52] Further, the weapons used were cluster bombs, which in themselves contain explosive sub-munitions that weigh up to twenty kilograms.[53] Knowledge of the same would give Stun sufficient reasons to believe that use of such weapons over the Riosi airbases would jeopardize nearby civilian objects.[54] Thus, there was intention to direct the attack at civilian objects.

D. The conduct took place in the context of and was associated with an international armed conflict, and Stun knew of the same.

At the point of time of the said attack, there was an ongoing international armed conflict on as argued above.[55] The present attack is a part of the aforementioned conflict and known to Stun,

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[48] Article 52(2), AP I.

[49] Prosecutor v. Dario Kodic and Mario Cerkez, *Prosecutor's Pre-Trial Brief*, ICTY, IT-95-14/2-PT, p. 49; Prosecutor v. Radovan Karadzic, *Prosecutor's Pre-Trial Brief*, ICTY, IT-95-05/18-PT, p. 4.

[50] Blaskic, ¶180.

[51] Prosecutor v. Milan Simic, *Prosecutor's Pre-Trial Brief*, IT-95-9-PT, p. 35.

[52] Proposition, ¶27.

[53] Article 2(1), Convention on Cluster Munitions, 2008.

[54] Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, *Judgment*, 30 September 2008, Case no. ICC-01/04-01/07, ['***Katanga'***] ¶531.

[55] *See*, argument II.C.

as it was his intention to send UAVs to the Riosi territory stems from its passive support to Paros.[56]

E. Stun bears criminal responsibility as a commander for the attack, under Article 28(a).

i. *Stun exercises "effective control" over the persons launching the UAV.*

The test of "effective control" must be applied, which is defined as "a material ability to prevent or punish criminal conduct".[57] In the present matter, Stun, by virtue of being Chief of Staff, leads the joint command of Minos land, water and air forces.[58] Moreover, he is also the chair of the National Defence Research and Development Council ['***NDRC***'] that dealt with development of the computer software that enables drones to carry out autonomous missions.[59] Thus, his responsibility for the attacks is not only for the lunch of the said attack, but also on account of the software that failed to abort the mission before the release of bombs on the residential area.

ii. *Stun knew, or should have known of the attack.*

Command responsibility applies to every commander at every level of command as it is "general obligation" of each commander to maintain order and control of his own troops.[60] The threshold for knowledge under command responsibility is that military commanders knew or should have known that his forces were committing crimes.[61] Herein, the facts show that it was Stun's suggestion to equip the drones being sent to the Riosi territory with cluster munitions. This shows knowledge of the attack. Further, having suggested the use of such a weapon, Stun

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[56] Proposition, ¶27.

[57] Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo, *Judgment*, 20 February 2001, Case No. IT-96-21-A, , ¶256; Prosecutor v. Jean-Pierre Bemba Gambo, *Judgment*, 20 April 2009, PTC No. ICC-01/05-01/08, ¶415-416.

[58] Proposition, ¶6.

[59] Proposition, ¶6.

[60] Prosecutor v. Sefer Halilovic, ICTY, Judgment, 16 October 2007, Case no. IT-01-48-A, ¶63.

[61] Article 28(a)(i), Rome Statute.

ought to have known the possible damage to the neighbouring areas in case of a defensive reaction by the drones.[62]

Furthermore, even if we assume that Stun did not know of the specific details of the attack on the residential area, he is liable as the knowledge required does not include specific facts about the unlawful acts committed.[63]

iii. *Stun failed to take all necessary and reasonable measures within his power to prevent or repress the attack.*[64]

Stun has failed to take any measures to either prevent or punish the acts committed by his subordinates, which, along with the above factors, makes his liable as a commander.

Therefore, Genral R. Stun is responsible as a Commander for the attack on the residential area near the Riosi airbases.

IV. GENERAL R. STUN SHOULD BE TRIED FOR THE CHARGE UNDER ARTICLE 8(2)(a)(vii).

A. The report by the Riosi Friendship Association is Admissible and of Probative value.

Regarding the missing Riosi nationals, the only list available was furnished by the Riosi Friendship Association ["**RFA**"]. By the admission of the Minos government no other list of detainees was prepared.[65] Therefore, the list as evidence of missing persons has probative value and hence is admissible.[66]

B. Perpetrator has deported, transferred and confined the protected persons.

Deportation is illegal when displacement of civilian population has been 'forced'.[67] As the Riosi nationals were *transferred* forcefully to the undisclosed detention centre,[68] the

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[62] Proposition, ¶6, ¶27, ¶28.

[63] Judge Bakone Justice Moloto, Command Responsibility in International Criminal Tribunals, 3 BERKELEY J. INT'L. PUBLICIST 12, 18 (2009).

[64] Article 28(a)(ii), Rome Statute.

[65] Problem, ¶32.

[66] Art. 69 (4), Rome Statute.

[67] Prosecutor v. Milorad Kronjelac, ICTY, *Judgment*, 15 March 2002, Case no. IT-97-25-T, ['***Kronjelac'***] ¶475; Krstic, ¶521.

[68] Problem, ¶4.

displacement is illegal. The intent of the perpetrator must merely be that the victim be removed, and the return of the person is immaterial in determining intent.[69] The public directive by the NSC is evidence that the NSC prompted the police and the MAF, to commit the crimes of deportation and forcible transfer.[70] The legal basis for confinement, if any, must apply throughout the period of the confinement.[71] The selective deprivation of only 58 out of 250 persons, all arrested together initially, is evidence that any legal basis of initial confinement ceased to exist with the release of the rest. Further, the fact that the civilians were detained because of their nationality is evidence of an unlawful confinement.[72]. Stun being a critical member of the NSC Bureau, and the chair of the MAF, has constructively transported, deported and confined these persons unlawfully.

C. The deported or transferred persons were protected under one or more of the Geneva Conventions of 1949.

In allowing Paros' planes to use its air bases, Rios violated the customary international law prohibition against the military use of neutral ports and waters[73]. They also exhibited their support to Paros by participation in the regional military alliance and undertaking to put their military installations at the disposal of other members,[74] thus depriving itself of its neutral status. Therefore, the 58 Riosis were not nationals of a neutral state and were entitled to protection under Art. 4 of GC IV.

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[69] Prosecutor v. Stakic, ICTY, *Judgment*, 31 July 2003, Case No. IT-97-24-T, ¶687.

[70] Prosecutor v. Brdjanin, ICTY, *Judgment*, 1 September 2004, Case No. IT-99-36-T 574; Proposition, ¶30.

[71] Kronjelac, ¶114.

[72] Prosecutor v. Simic et al., ICTY, *Judgment*, 17 October 2003, Case No. IT-95-17/1-T, ¶657, ¶685; Prosecutor v. Naletilic and Martinovic, ICTY, *Judgment*, 31 March 2003, Case No. IT-98-34-T, ¶657.

[73] Articles 5, 10, Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War, the Hague, 18 October 1907.

[74] Problem, ¶3.

The Riosi nationals were clearly unarmed,[75] and did not pose any legitimate reason to prejudice the security of Minos in order to exempt the application of Art. 5.[76]

D. General Stun was aware of the factual circumstances that established the protected status.

It was the NSC that directed the expulsion of Riosis[77] and Stun being part of its Bureau was well aware that Rios was not a neutral State. Furthersince all 58 persons were of Riosi nationality, Stun was aware of their protected status.

E. Conduct took place in the context of and was associated with an international armed conflict and General Stun was aware of this.

The detention of these 58 Riosi persons was a part of the Minos attack in the ongoing international armed conflict.[78] It was retaliation by the Minos Armed Forces to Rios' contribution to the attack by Paros UAVs on Minos. By virtue of his position in the NSC Bureau, Stun knew of the conduct.

F. Stun is individually responsible for these acts under Article 25(3)(a).

A perpetrator behind a perpetrator may be individually criminally responsible, regardless of whether the direct perpetrator is also responsible.[79] Thus to impute criminal liability under Article 25(3)(a), it is necessary to prove that Stun has:

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[75] Problem, ¶30.

[76] Prosecutor v. Zejnil Delalic et al., ICTY, *Judgment*, 16 November 1998, Case No. IT-96-21-T, ¶1134.

[77] Problem, ¶30.

[78] *See*, argument II.C.

[79] Katanga, ¶493.

i. *Control over organisation.*

Herein, by virtue of being the head of the organisation,[80] Stun fulfills this requirement of being the head. Stun cannot use the defense of having a higher rank and hence being detached from the acts, as the responsibility grows *in tandem* with the hierarchy.[81]

ii. *Organised hierarchical apparatus of power.*

This requires an automatic compliance of the leader's orders, independent of the person executing the orders.[82] In the present matter, Stun exercised such authority due to the dual powers that he possessed as the joint command of Minos land, water and air forces and the chair of the NDRC.[83]

iii. *Stun made an essential contribution to the crime.*

Stun's essential contribution, which would make him a co-perpetrator,[84] is through the NSC directive that stated that all Riosi nationals in Brig would be *coercively* expelled with the help of the MAF.[85] Being a key member of the NSC Bureau, he not only had the knowledge of the conduct, but also played an active role in making these national security strategies for Minos.[86] *Therefore, there are substantial grounds to believe that these objective and subjective elements for the aforementioned charge against General R Stun are fulfilled.*

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[80] Proposition, ¶6.

[81] Attorney General v. Eichmann, Jerusalem District Court, *Judgment*, 12 December 1961, 36 ILR 4-15, 18-276, ¶197, *cited in* Katanga, ¶503.

[82] Katanga, ¶514.

[83] Proposition, ¶6.

[84] Prosecutor v. Thomas Lubanga Dyilo, Judgment, Trial Chamber, 14 March 2012, Case no. ICC-01/04-01/06, ¶999; Katanga ¶¶524-526.

[85] Proposition, ¶30.

[86] Proposition, ¶5.