

MEMORIAL FOR THE DEFENDANT

D17

I. ADMISSIBILITY

1. This case is inadmissible under Article 17(1)(a) of the Rome Statute [“the Statute”] because Homeland, who has jurisdiction, is investigating the case. It is sufficient when the domestic investigation covers substantially the same conduct before the Court.¹
2. The forensic analysis and report were physically conducted.² The Ministry of Defence and Security was also ready to examine the incident.³ Therefore, investigative steps were taken and such investigations substantially covered the same act before the Court.
3. In any event, Homeland is able and willing to open the prosecution under Articles 17(3) and (2). First, Homeland is able to prosecute Troy under Article 17(3). Its judicial authorities are not collapsed⁴ since no evidence shows that court personnel or qualified judges are inadequate. Also, the inability of prosecution could be declared only when no domestic penalization for the conduct in question existed.⁵ The conducts in question could be penalized under the Homeland law.⁶
4. Second, Homeland is not unwilling to investigate the case under Article 17(2). The delay was justified since Homeland was under martial law. The government had to concentrate its energy on eliminating the threat.⁷ Furthermore, the proceeding was conducted independently and did not serve the purpose of shielding Troy from criminal responsibility.⁸ The Homeland government neither

¹ *Gaddafi*, ICC-01/11-01/11-344-Red(2013), ¶77[“*Gaddafi*”].

² Problem, ¶¶21, 23.

³ Problem, ¶22.

⁴ *Gaddafi*, ¶205.

⁵ MARKUS BENZING, *THE COMPLEMENTARITY REGIME OF THE INTERNATIONAL CRIMINAL COURT: INTERNATIONAL CRIMINAL JUSTICE BETWEEN STATE SOVEREIGNTY AND THE FIGHT AGAINST IMPUNITY* 615(2003).

⁶ Problem, ¶32.

⁷ Problem, ¶¶9, 22.

⁸ The Statute, arts.17(2)(a), (c).

investigated nor charged against persons involved.⁹

5. Therefore, Homeland was neither unable nor unwilling to open the prosecution. The case is inadmissible before the Court.

II. CONTEXTUAL ELEMENTS

A. WAR CRIMES

6. An armed conflict of an international character [“IAC”] exists in case of armed hostilities between States through their respective armed forces or other actors acting on behalf of the State.¹⁰ Homeland and Gartenland were parties throughout the conflict which lasted from June 2012 to 2013 when a peace settlement was reached.¹¹ Homeland participated in armed hostilities through its Homeland Armed Forces [“HAF”]; Gartenland participated in armed hostilities through the Armed Resistance Council [“ARC”], who lead the Northland Forces [“NF”].
7. A military group acts upon a State when the State had a role in organizing, coordinating or planning the military actions of the military group.¹² Around the time when Members of the Council of Elders [“Elders”] moved into Gartenland, the ARC’s operational capacity has largely enhanced. By then, the conflict escalated to a full-fledged war, the ARC assumed control in Northland and became capable of launching attacks in Homeland main cities.¹³ Therefore, it is reasonable to infer that the Elders, from whom the NF received exclusive guidance, had conspired with Gartenland, and Gartenland had been complicit in the NF terrorist attacks in Homeland.¹⁴ Without the assistance of Gartenland, the Elders would have been arrested for treason with the deployment of 10,000 HAF troops and under the state of emergency.¹⁵ Moreover, at least one suspected

⁹ Problem, ¶28.

¹⁰ *Lubanga*, ICC01/0401/06(2012), ¶541.

¹¹ Problem, ¶¶11, 28.

¹² Problem, ¶¶11, 28.

¹³ Problem, ¶¶11, 12.

¹⁴ Problem, ¶¶9, 18.

¹⁵ Problem, ¶9.

perpetrator of the attacks has been identified in Gartenland.¹⁶ Through controlling the Elders, from whom the ARC received exclusive guidance,¹⁷ Gartenland had a role in organizing, coordinating, or planning the military actions of NF. It should also be noted that Gartenland and Homeland had been engaged in war which only ceased in 2007,¹⁸ providing Gartenland the motivation to take revenge upon Homeland.

B. CRIME AGAINST HUMANITY

1. There was no attack directed against civilian population in furtherance of a State policy.

8. Population refers to a multiplicity of persons sharing common attributes. The victims must not be a limited and randomly selected number of individuals.¹⁹ The Elders were specifically targeted because of their individual attributes,²⁰ namely, their involvement in and significance to the NF,²¹ rather than their membership of a targeted civilian population.
9. The attack has to be pursuant to or in furtherance of a State policy, which is required that the State actively promote or encourage such an attack against a civilian population. The Homeland government did not promote nor encourage an attack against the civilian population. The overall military goal of the Homeland government was to fight the terrorist network. Conducting law enforcement against the supporters of the Elders is not an act referred to in Article 7(1).²² Offering a reward to informers was only an attempt to put the Elders on trial.²³

2. The attack was neither widespread nor systematic.

10. A widespread attack is carried out over a large geographical area or in a small

¹⁶ Problem, ¶18.

¹⁷ Problem, ¶10.

¹⁸ Problem, ¶6.

¹⁹ *Kunarac*, IT-96-23&231(2002), ¶90[“Kunarac”].

²⁰ *Tadić*, IT-94-1-T(1997), ¶644[“Tadić”].

²¹ Problem, ¶¶3, 10.

²² Elements of Crimes, art.7, Introduction, ¶3[“EoC”].

²³ Problem, ¶¶15, 9.

geographical area directed against a large number of civilians.²⁴ It is understood as a massive, frequent, large scale action, carried out collectively with considerable seriousness.²⁵ The attack in Heron, which involved the death of 3 Elders, a suspected terrorist, and 7 other civilians did not meet the widespread requirement.²⁶

11. The systematic criterion requires a repeated and continuous commission of criminal acts.²⁷ There had not been a similar attack before or after the attack on Heron, indicating that it was a spontaneous and isolated act of violence,²⁸ as opposed to following a pattern or methodical plan,²⁹ or being guided as to the envisaged object of the attack.³⁰

III. FIRST CHARGE

12. With respect to the attack on the power grid in the city of Colmer, Troy does not bear individual responsibility under Article 25(3)(d) of the Statute for the alleged commission of war crimes under Articles 8(2)(c)(i) and 8(2)(e)(iv), and crime against humanity under Article 7(1)(k).

A. THE CRIME UNDER ARTICLE 8(2)(E)(IV) IS NOT SUFFICIENTLY ESTABLISHED.

1. *Actus reus*

13. Attack refers to the acts of violence against the adversary, whether in offence or in defence.³¹ An attack on civilian infrastructure must disrupt the public life,

²⁴ *Al Bashir*, ICC-02/05-01/09-3(2009), ¶81.

²⁵ *Akayesu*, ICTR-96-4-T(1998), ¶580.

²⁶ *Problem*, ¶18.

²⁷ *Blaškić*, IT-95-14-A(2004), ¶203.

²⁸ *Bemba*, ICC-01/05-01/08-424(2009), ¶91[“*Bemba Decision*”].

²⁹ *Tadić*, ¶648.

³⁰ *Katanga*, ICC-01/04-01/07-3436-tENG(2014), ¶¶1111-13[“*Katanga*”].

³¹ API, art.49(1).

which goes beyond mere inconvenience.³² Nevertheless, the dysfunction of the Supervisory Control and Data Acquisition [“SCADA”] computer systems was not permanent and did not cause any physical damage to life upon this isolated cyber operation.³³

14. The SCADA systems controlled the power grid in Colmer. Those civilian infrastructures provided military support for the NF, as they were using such infrastructures to defend the city, resupply and reconstitute its forces.³⁴ Military advantage is assessed in relation to each incidents.³⁵ In order to neutralize the defence of the city and minimize the casualties, the attack on the power grid did provide a concrete and perceptible military advantage, as finally, the HAF were able to disrupt NF’s defence systems and succeeded in taking control of large parts of East Colmer.³⁶

2. Mens rea

15. The perpetrator should be aware that the object is protected and that it does not qualify as a military objective.³⁷
16. Dolmar’s Ministry of Defence Information and Technology Center [“MDITC”] did not intend to attack the General Hospital [“Hospital”]. Their primary object of the attack was the SCADA systems. The indirect influence on the Hospital was an incidental damage.³⁸

B. THE CRIME UNDER ARTICLE 8(2)(C)(I) IS NOT SUFFICIENTLY ESTABLISHED.

1. Actus reus

17. The war crime of murder requires that a perpetrator killed or caused the death of

³² Katharina Ziolkowski, *Ius ad bellum in Cyberspace – Some Thoughts on the “Schmitt Criteria” for Use of Force*, in 2012 4TH INTERNATIONAL CONFERENCE ON CYBER CONFLICT 299-300 (Czosseck *et al.* eds., 2012).

³³ Problem, ¶¶20-21.

³⁴ Problem, ¶19.

³⁵ *Galić*, IT-98-29-A(2006), ¶235.

³⁶ Problem, ¶20.

³⁷ *Blaškić*, IT-95-14-T(2000), ¶185.

³⁸ Problem, ¶20.

one or more persons as a result of actions or omissions.³⁹ The perpetrator's conduct must be a substantial cause of death and the only reasonable inference from the evidence.⁴⁰

18. The death in the Hospital resulted from the power outage and the inaccessibility of medical records cumulatively. The power outage only lasted for 7 days. Therefore, it can be inferred that the substantial cause of death was the inaccessibility of medical records resulting from the other cyber operation.⁴¹
19. The *actus reus* of cruel treatment was not established either. The impediment of Colmer's civilian systems only lead to inconvenience to the public life. The prosecutor may contend that such impediments blocked, hindered or delayed the treatment of patients.⁴² However, the situation was caused primarily by the simultaneous cyber attack on the Hospital's archive, which the perpetrator is not responsible for.

2. *Mens rea*

20. The perpetrator only meant to temporarily disable the city's power grid in order to further execute its military operation without causing serious casualties. The perpetrator was unaware that death would occur in the ordinary course of events.⁴³ The power was soon repaired and the Hospital did not suffer another physical attack which could disable its medical function. Furthermore, the perpetrator was unaware of the simultaneous cyber operation on the Hospital's central archive.⁴⁴ Therefore, the perpetrator did not have intent to cause the death of those place hors de combat by sickness or wounds.
21. The perpetrator did not intend to inflict severe physical or mental pain.⁴⁵ They simply neutralized the defence of the city since the battle had lasted for more

³⁹ *Kordić*, IT-95-14/2-T(2001), ¶229.

⁴⁰ *Delalić*, IT-96-21-T(1998), ¶424.

⁴¹ Problem, ¶25.

⁴² Problem, ¶25.

⁴³ The Statute, art.30(2).

⁴⁴ Problem, ¶¶20, 22.

⁴⁵ *Katanga*, ¶793.

than 4 months.⁴⁶ Moreover, since the patients were not deprived of the chance to receive medical resources from other hospitals,⁴⁷ the perpetrator did not know that severe physical or mental pain would occur in the ordinary course of events by disabling the SCADA systems.

C. THE CRIME UNDER ARTICLE 7(1)(K) IS NOT SUFFICIENTLY ESTABLISHED.

1. *Actus reus*

22. When assessing the inhumane act, consideration must be given to all of the factual circumstances. Relevant factors include the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim, as well as the physical, mental and moral effects of the act upon the victim.⁴⁸
23. Taking the aforementioned assessment under Article 8(2)(c)(i), the act did not possess a similar nature or gravity of any other act referred to in Article 7(1).⁴⁹

2. *Mens rea*

24. The requisite *mens rea* should be inferred from the moment in which the perpetrator takes the action that commences its execution by means of a substantial step.⁵⁰
25. Dolmar's MDITC was unaware of the factual circumstances that established the character of the act and did not intend to cause the serious suffering on people. The overall military tactics of the HAF were simply to neutralize the defence of the city with the hope to minimize casualties. The perpetrator did not take the action by means of a substantial step to inflict pain or suffering as evidence showed that the simultaneous cyber operation on the Hospital was claimed by the Fighting Terrorist Networks Company rather than the perpetrator themselves.⁵¹

D. TROY IS NOT CRIMINALLY RESPONSIBLE.

1. *Actus reus*

⁴⁶ Problem, ¶¶13, 19.

⁴⁷ Problem, ¶20.

⁴⁸ *Kordić*, IT-95-14/2-A(2004), ¶117.

⁴⁹ *Katanga*, ICC-01/04-01/07-717(2008), ¶451[“*Katanga Decision*”].

⁵⁰ *Katanga Decision*, ¶¶455, 459.

⁵¹ Problem, ¶¶20, 22.

26. In the absence of an explicit agreement, a common purpose can only be inferred from multiple instances of concerted action by a group.⁵² The alleged connection between INTELCOM and the Dolmar's MDITC did not constitute a concerted manner and a criminal purpose, since the nature of the INTELCOM was to collect intelligence information, and the specific task assigned by Troy was only limited to locate the Elders, which was totally different from attacking the SCADA systems.⁵³
27. Liability under this Article requires a significant contribution made to the criminal purpose.⁵⁴ Although Troy's position in the Homeland government provides her a participation and knowledge of the attack allegedly conducted between INTELCOM and Dolmar's MDITC. However, there was no other suggestion that Troy was bestowed with the power to exercise any form of authority over Dolmar's MDITC which on the ground indicates that Troy did not make any contribution to the commission.⁵⁵

2. *Mens rea*

28. It is required that the accused had either knowledge of criminal activity or the aim to further such activity.⁵⁶ Troy did not have positive knowledge that the specific crime would be committed.⁵⁷ If she had had positive knowledge of such crime, she would have launched the military operation right after the power outage.⁵⁸

VI. SECOND CHARGE

29. With respect to the attack on 15 September 2012 in the town of Heron, Gartenland, Troy does not bear individual responsibility under Article 25(3)(b) of

⁵² *Mbarushimana*, ICC-01/04-01/10-465(2011), ¶271[“*Mbarushimana*”].

⁵³ Problem, ¶¶16, 21.

⁵⁴ *Mbarushimana*, ¶283.

⁵⁵ Problem, ¶¶5, 20-21.

⁵⁶ The Statute, 25(3)(d)(ii).

⁵⁷ KAI AMBOS, TREATIES ON INTERNATIONAL CRIMINAL LAW VOLUME I: FOUNDATION AND GENERAL PART 169(2013).

⁵⁸ Problem, ¶20.

the Statute for ordering the alleged commission of war crime under Article 8(2)(e)(i) and crime against humanity under Article 7(1)(a).

A. THE CRIME UNDER ARTICLE 8(2)(E)(I) IS NOT SUFFICIENTLY ESTABLISHED.

1. Actus reus

30. The Elders were legitimate military objectives. First, the Elders had publicly supported the ARC, who had proclaimed themselves to be under the exclusive guidance of the former.⁵⁹ The Elders had motivated the NF to engage in war by facilitating Northland's secession from Homeland.⁶⁰
31. Second, evidence also shows that, even after their fleeing to Gartenland, the Elders were able to maintain tight connection with the terrorist activities carried out by the NF in Homeland. In the Elder's hideout in Heron, there was also the presence of a person linked to an attack against a police station in Homeland's capital city that had claimed a dozen victims.⁶¹ It may therefore be reasonably inferred that the Council of Elders was the *de facto* commander of the NF.
32. The loss of civilian life in the attack was not disproportionate. An attack is disproportionate when the expected incidental loss to civilian would be excessive in relation to the concrete and direct military advantage anticipated.⁶² The Elders were high-value targets, which justify a greater collateral damage than low-value targets.⁶³
33. Here, substantial military advantage was anticipated. Troy believed the capture or neutralization of the Elders, who were the *de facto* leaders of the ARC, would demoralize the ARC, and thus would put an end to the attacks in Homeland and hasten the defeat of Northland. The military advantage was realized in a single week after the attack. By effectively demoralizing the ARC, the HAF closed in on Colmer.⁶⁴ Therefore, the advantage was substantial and relatively close, rather

⁵⁹ Problem, ¶10.

⁶⁰ Problem, ¶8.

⁶¹ Problem, ¶18.

⁶² API, art.51(5)(b).

⁶³ NILS MELZER, TARGETED KILLING IN INTERNATIONAL LAW 404(2008).

⁶⁴ Problem, ¶19.

than hardly perceptible which only appears in the long term.⁶⁵

2. *Mens rea*

34. The *mens rea* requirement in the crime of attacking civilian is a repetition of Article 30(2)(a). The perpetrator must mean the object to be civilian population as such or individual civilians not taking direct part in hostilities.⁶⁶ The extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war is indicative of the prerequisite intent.⁶⁷

35. In this case, the HAF had taken all precautions to avoid injuries and casualties to minimize adverse consequences on the population.⁶⁸ First, they have done everything feasible to verify that the objectives to be attacked were military objectives.⁶⁹ Second, the surveillance video from the drone made sure that the Elders were in the building. Third, the presence of the HAF legal advisers and Dolmar military advisers⁷⁰ ensured that civilian population was not made the primary object of the attack.

B. THE CRIME UNDER ARTICLE 7(1)(A) IS NOT SUFFICIENTLY ESTABLISHED.

1. *Actus reus*

36. The attack was not primarily directed against civilians.⁷¹ Civilians were victims of inevitable collateral damage, which should be justified because of the high value of the Elders.

2. *Mens rea*

37. The perpetrator was not aware that the civilian population was the primary target of the attack. As aforementioned, all precautions had been taken to ensure that the civilian population was not the primary object.

⁶⁵ YVES SANDOZ *et al.* (eds.)(ICRC), COMMENTARY ON THE ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS(1987), ¶2209.

⁶⁶ *Katanga*, ¶802.

⁶⁷ *Kunarac*, ¶91.

⁶⁸ Problem, ¶19.

⁶⁹ API, art.57(2)(a)(i).

⁷⁰ Problem, ¶17.

⁷¹ Bemba Decision, ¶¶76-77.

3. The requisite nexus and knowledge did not exist.

38. There must be a nexus between the acts perpetrated by the accused and the attack directed against the civilian population.⁷² Nevertheless, first, there were no similarities between the law enforcement of imprisonment⁷³ and the conduct of murder. Second, missiles were launched based on the military and strategic objective of recovering Northland by eliminating the Elders. Third, the attack in Gartenland was of no geographical proximity with the law enforcement, which only took effect within the borders of Homeland.⁷⁴

39. The perpetrator must know that the conduct was part of a widespread or systematic attack against a civilian population.⁷⁵ The perpetrator specifically targeted the Elders,⁷⁶ rather than indifferently targeting the civilian population, indicating the lack of *mens rea* for nexus.⁷⁷

C. TROY IS NOT CRIMINALLY RESPONSIBLE.

40. Regarding Troy's knowledge of the object of the attack, Troy was not aware that civilians had become the primary object. First, according to INTELCOM's intelligence, Troy considered that Gartenland had harbored terrorists and had been complicit in the attack.⁷⁸ She believed that the capture or neutralization of the Elders would demoralize the ARC, and that the attack was a proportionate response to the threat of terrorist attacks on Homeland.⁷⁹

41. Second, Troy took all precautions to minimize the adverse consequence on the population. Troy had tasked the INTELCOM prior to the attack in order to locate, as a matter of priority, the Elders.⁸⁰ Furthermore, she had sought advice from HAF legal advisers and Dolmar military advisers to ensure that her conducts were in

⁷² *Bemba Decision*, ¶¶84-86.

⁷³ Clarifications, ¶46.

⁷⁴ Problem, ¶15; *Tadić*, ¶¶629-33.

⁷⁵ EoC, art.7(1)(a)-3.

⁷⁶ Problem, ¶16.

⁷⁷ *Mrkšić*, IT-95-13/1-A(2009), ¶42.

⁷⁸ Problem, ¶5.

⁷⁹ Problem, ¶¶16, 18-19.

⁸⁰ Problem, ¶16.

compliance with the requirements under international humanitarian law. Finally, she had applied drones that were capable of precise targeted killing, and had taken all precautions to minimize adverse consequences on the population.⁸¹

42. Regarding Troy's knowledge of the nexus of the crime against humanity, Troy was not aware that the attack on the targeted civilians was part of the attack against the Elders and their supporters, considering that she would not have known that the civilians targeted, including the rescuers and the police officer,⁸² had supported the Elders.

43. In sum, Troy was not aware that the crime against humanity of murder and the war crime of attacking civilians would be committed in the ordinary course of events as a consequence of her order.⁸³

V. THIRD CHARGE

44. With respect to the campaign to regain control of Northland towns, Troy does not bear individual responsibility under Article 25(3)(c) of the Statute for the alleged commission of war crime under Article 8(2)(e)(xv).

A. THE CRIME IS NOT ESTABLISHED.

1. *Actus reus*

45. The HAF did not violate the international law of armed conflict regarding the ban of expanding bullets. First, Homeland is neither a contracting party to the Hague Conventions of 1907⁸⁴ nor that of 1899,⁸⁵ thus it is questionable that Homeland should bear the obligation.⁸⁶

46. Second, the use of expanding bullet in question does not violate customary international law. Absolute prohibition on expanding bullets as customary

⁸¹ Problem, ¶¶17, 19.

⁸² Problem, ¶18.

⁸³ *Katanga*, ¶802.

⁸⁴ Hague Convention (IV) respecting the Laws and Customs of War on Land, Oct. 18, 1907.

⁸⁵ Instructions, ¶8; Problem, ¶26.

⁸⁶ VCLT art.34, 1155 U.N.T.S. 331(1969).

international law was unsure. Law enforcement,⁸⁷ including the fight against terrorists or the house-searches operations, makes an exception, since the use of such bullets minimizes the risk for law enforcement officials and bystanders.⁸⁸

47. The employment of expanding bullets was in a house-searches operation against terrorists. Terrorist activities conducted by NF militants included several attacks against public service, and particularly, a suicide attack near Homeland's Ministry of Defence and Security.⁸⁹

2. *Mens rea*

48. The HAF were not aware of the serious outcome when firing the shots; thus they did not intend to commit the crime.⁹⁰ At first, the HAF did not know the bullets were changed. The HAF were equipped with the expanding bullets because of the addendum to the military agreement. However, not until December 2012 was the addendum disclosed.⁹¹

49. Besides, the discussion of expanding bullets was held after the operations.⁹² The HAF did not know that using such bullets would cause more suffering to the adversary. Therefore, the requisite knowledge to commit the crime was absent.

50. Furthermore, the HAF were unaware of factual circumstances that established the existence of an armed conflict. Their duty was only to re-establish law and order in Northland⁹³ by performing house-searches operations against the terrorists.

B. TROY IS NOT CRIMINALLY RESPONSIBLE.

51. A person is responsible under this article if he provides assistance to the commission of a crime, and by engaging in this conduct, he intends to facilitate

⁸⁷ JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (Vol. I) 77(2009).

⁸⁸ OTTO TRIFFTERER & KAI AMBOS, THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY 466(2016).

⁸⁹ Problem, ¶¶12, 24.

⁹⁰ The Statute, art.30.

⁹¹ Problem, ¶6.

⁹² Problem, ¶¶25-26.

⁹³ Problem, ¶19.

the commission of the crime.⁹⁴

1. *Actus reus*

52. Troy did not aid, abet or otherwise assist the commission of crime.⁹⁵ To establish Troy's responsibility, her practical assistance, encouragement, or moral support must have a substantial effect on the commission of the crime,⁹⁶ and should facilitate its commission in some significant way.⁹⁷

53. Remaining absent and silent in and throughout the storm of the East Colmer building on 11 October,⁹⁸ Troy did not give any encouragement or moral support on the commission of the crime. Although practical assistance may occur before, during or after the crime of the physical perpetrator,⁹⁹ a long time lapse may suggest the lack of substantial effect required for aiding and abetting.¹⁰⁰ Under the direction of Troy, the military cooperation agreement with Dolmar was signed in early 2010, well before the campaign that took place on and around 11 October 2012. It allowed the HAF to gain access to modular pistols enabling the use of various kinds of ammunition, including ball ammunition and special purpose ammunition.¹⁰¹ It is therefore highly likeable that other factors, such as the HAF's aim to strengthen control over East Colmer, had been the true cause for commission of the crime.

2. *Mens rea*

54. Troy did not sign the agreement for the purpose of facilitating the commission of crime. Wherein, purpose implies a specific subjective requirement which goes, in its volitional dimension, beyond mere knowledge.¹⁰² Troy did not know that she

⁹⁴ *Blé Goudé*, ICC-02/11-02/11-186(2014), ¶167.

⁹⁵ The Statute, art.25(3)(c).

⁹⁶ *Simić*, IT-95-9-A(2006), ¶85[“*Simić*”].

⁹⁷ *Tadić*, ¶¶674, 688–92.

⁹⁸ Problem, ¶23.

⁹⁹ *Simić*, ¶85.

¹⁰⁰ *Strugar*, IT-01-42-T(2005), ¶355.

¹⁰¹ Problem, ¶6.

¹⁰² KAI AMBOS, TREATIES ON INTERNATIONAL CRIMINAL LAW VOLUME I: FOUNDATION AND GENERAL PART 116(2013).

would facilitate the war crime of employing prohibited bullets. She expected the use of expanding bullets in situations of law enforcement, which is permitted under customary international law.¹⁰³ There was the ongoing need to enhance law enforcement capacity with the rising nationalist sentiment in Northland.¹⁰⁴ Meanwhile, there was no ongoing armed conflict at the time when the agreement was signed in early 2010.

¹⁰³ JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (Vol. I) 77(2009).

¹⁰⁴ Problem, ¶4.

PRAYER

The Defendant respectfully requests that this Honorable Court declare that Helen Troy is not criminally responsible for:

Crimes against humanity under Articles 7(1)(a) and 7(1)(k), and
War crimes under Articles 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(iv) and 8(2)(e)(xv)
of the Statute.

**RESPECTFULLY SUBMITTED,
THE DEFENDANT**