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## PLEADINGS AND AUTHORITIES

### I. JURISDICTION.

All the crimes General Sulphide is charged with were committed after the entry into force of the Rome Statute,<sup>1</sup> and fall within the ambit of Article 8.

Bigland's justice system's operational failure, their decision to hand General Sulphide over to the ICC for prosecution, as well as the gravity of the crimes make the ICC the appropriate court for trying General Sulphide.

### II. NON-INTERNATIONAL ARMED CONFLICT (NIAC).

'NIAC' is defined 'armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties'.<sup>2</sup> The ICTY further defined it as "protracted armed violence between governmental authorities and organized armed groups or between such groups within a State".<sup>3</sup> Factors determining whether one exists include rebels possessing minimally organized armed forces, responsible command and controlling territory.<sup>4</sup>

There had been protracted armed violence from 1990s to June 2009 between government armed forces and the Nitrata and Ferroda tribes,<sup>5</sup> establishing the existence of a NIAC within Bigland.

### III. DOCTRINE OF COMMAND RESPONSIBILITY.

The doctrine of command responsibility holds military commanders liable for crimes committed by subordinates.<sup>6</sup> To apply command responsibility, it is necessary to establish: a

<sup>1</sup> U.N. Doc. A/CONF. 183/9.

<sup>2</sup> Common Article 3, Geneva Conventions.

<sup>3</sup> ICTY, *Prosecutor v Tadic*, IT-94-1-A, para. 70 (October 2, 1995); Junod, *International Humanitarian and Human Rights Law in Non-international Armed Conflicts*, American University Law Review (1983).

<sup>4</sup> Article 1, Additional Protocol (AP) II; Pictet, *Commentary on the Geneva Conventions of 12 August 1949* (1952) vol I, pg.49; *The Manual of the Law of Armed Conflict*, Oxford University Press, pg.387; Junod, *International Humanitarian*, *supra* note 3; *Prosecutor v Akayesu*, ICTR-96-4-I (1998).

<sup>5</sup> Fact dossier, ¶ 2.7, 2.8, 2.30, 2.32.

<sup>6</sup> Article 28(b), Rome Statute; AP I, Articles 86, 1125 U.N.T.S 3 (1979); Article 6(3), ICTR Statute; Article 7(3), ICTY Statute.

superior-subordinate relationship;<sup>7</sup> the superior's actual or constructive knowledge of crimes committed or about to be committed by subordinates;<sup>8</sup> and failure on the part of the superior to take adequate measures to prevent or repress the crimes.<sup>9</sup>

In superior-subordinate relationships, the superior must have control over his subordinates.<sup>10</sup> General Sulphide possesses this, being dictator of Bigland and having the capacity to order military action.<sup>11</sup>

General Sulphide, in ordering his soldiers to wage 'total war' using 'any and every available method', and by propagating the policy of "Victory through Aggression", opened the floodgates for his soldiers to take overly savage action, including attacking a refugee centre and hospital, and the murder of a civilian and two soldiers. He issued the policy knowing his army was not properly trained and were liable to commit atrocities.<sup>12</sup>

He also failed his obligation to take adequate measures to prevent atrocities committed by his soldiers, nor condemned or punished their actions.<sup>13</sup>

<sup>7</sup> *Prosecutor v Aleksovski*, ICTY-IT-95-14/1-T, ¶78 (1999).

<sup>8</sup> *Prosecutor v Delalic*, ICTY-IT-96-21-T, ¶346 (1998).

<sup>9</sup> *Prosecutor v Krnojelac*, ICTY-IT-97-25-T, ¶95 (2002); *Akayesu*, *supra* note 4.

<sup>10</sup> *Prosecutor v Kayeshima*, ICTY-IT-87-25-T, ¶95 (2002).

<sup>11</sup> Fact dossier, ¶2.10, 2.22.

<sup>12</sup> *Ibid*, ¶2.20; *Prosecutor v Delalic*, ICTY-IT-96-21-A, ¶239 (2001).

<sup>13</sup> Lippman, *The Uncertain Contours of Command Responsibility*, 9 *Tulsa J. Comp. & Int'l L.* 1 (2001); *Trial of General Yamashita*; U.S. Supreme Court (1946).

#### IV. FIRST INDICTMENT - GENERAL SULPHIDE IS CRIMINALLY LIABLE AS A SUPERIOR FOR THE MILITARY CONSCRIPTION OR ENLISTMENT OF CHILDREN UNDER THE AGE OF FIFTEEN YEARS.

It is illegal for children under fifteen to be conscripted or enlisted into national armed forces.<sup>14</sup> General Sulphide had introduced universal conscription for men aged 18 to 40 years in early 2006; at 2007's end, he expanded conscription to all able bodied citizens in Bigland,<sup>15</sup> which would include those below 15 years. Conscription is forced, while enlistment is voluntary.<sup>16</sup>

*Mens rea* consists of knowledge and intent.<sup>17</sup> General Sulphide's order to recruit 'all able-bodied citizens' is a clear statement of his intention to conscript children; he also possessed constructive knowledge that it would result in conscription or recruitment of children. Article 30(3) provides that 'knowledge' means an awareness that a consequence will occur in the ordinary course of events. Constructive knowledge is thus sufficient to fulfill the 'knowledge' requirement of *mens rea*.

#### V. SECOND INDICTMENT - GENERAL SULPHIDE IS CRIMINALLY LIABLE FOR DENIAL OF QUARTER.

The ICC has jurisdiction over natural persons who have committed a crime within the jurisdiction of the ICC.<sup>18</sup>

Under Article 8(2)(e)(x) the crime is satisfied once the relevant declaration is made or the order given in order to threaten the enemy or carry out hostilities on this basis.<sup>19</sup> For the mental

<sup>14</sup> Article 8(2)(e)(vii), Rome Statute; *Prosecutor v. Alex Brima et. al.*, SCSL-04-16-T (2007); *Prosecutor v Lubanga* ICC-01/04-01/06-T ; *Prosecutor v Norman* SCSL-2004-14-T (2004); Article 38, 1989 Convention on the Rights of the Child; Freeland, *Mere Children or Weapons of War* (2008), p. 5.

<sup>15</sup> Fact dossier, ¶ 2.11, 2.19.

<sup>16</sup> *Lubanga*, *supra* note 14.

<sup>17</sup> Article 30, Rome Statute.

<sup>18</sup> Article 25, Rome Statute.

<sup>19</sup> Werle, *Principles of International Criminal Law* (2005), p.362; *Abbaye-Ardenne Trial*, Military Court Aurich (1945).

element, Article 30 applies with regards to the declaration or order and the perpetrator's authority.

General Sulphide declared "total war", claiming victory would only come through "total commitment to the defeat of the Nitrata and Ferroda tribes' people", blurring the distinction between fighters and civilians. As dictator and military head, he had effective command and control over the Bigland forces, thus fulfilling the requirements of Article 8(2)(e)(x).

#### VI. THIRD INDICTMENT – GENERAL SULPHIDE IS CRIMINALLY LIABLE AS A SUPERIOR FOR THE ATTACK ON REFUGEE CAMP IN DUMOSA.

Sergeant Bromide illegally attacked the refugee camp under the orders of General Sulphide.<sup>20</sup> When General Sulphide instructed Sergeant Bromide to raid the refugee camp, he possessed the necessary *mens rea*.

'Civilians' are people who are not fighters.<sup>21</sup> Fighters are members of armed forces, other organized armed groups, or those taking direct part in hostilities.<sup>22</sup> A 'refugee' is any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country and is unable or unwilling to avail himself of the country's protection.<sup>23</sup> 'Refugee' has also been defined as a person forced to leave his country because of war or political, religious or social reasons.<sup>24</sup>

The refugee centre housed civilians and injured fighters fleeing Bigland; these people were not or were no longer taking direct part in hostilities, and were not legitimate military targets. In armed conflicts, those who are taking direct part in hostilities must be distinguished from those not so.<sup>25</sup> The principle of distinction "unquestionably represents accepted customary

<sup>20</sup> Article 8(2)(e)(i), Rome Statute; Fact dossier, ¶2.22, 2.23.

<sup>21</sup> Schmitt, Garraway, and Dinstein. (2006), *The Manual on the Law of Non-International Armed Conflict*, San Remo International Institute of Humanitarian Law.

<sup>22</sup> *Ibid.*

<sup>23</sup> Article 1A(2), Refugee Convention 1951; Protocol Relating to the Status of Refugees.

<sup>24</sup> *Oxford Advanced Learner's Dictionary (7<sup>th</sup> Ed.)*, (2005).

<sup>25</sup> Article 3, 1949 Geneva Convention IV.

law.”<sup>26</sup> According to the ICTY, the presence of a minority of armed persons in a group comprising primarily of civilians does not modify the group’s civilian character.<sup>27</sup>

Rule 15<sup>28</sup> states that during military operations, constant precaution must be taken to spare and avoid or minimize incidental loss of life, injury and damage to civilians and civilian objects. This was reaffirmed in U.N.G.A.R. 2675 (XXV). Furthermore, rule 20<sup>29</sup> requires parties to the conflict to give effective advance warning of attacks which may affect civilian populations, unless circumstances do not permit.<sup>30</sup> Sergeant Bromide failed to do all these things.<sup>31</sup> His actions contravened the principle of proportionality.<sup>32</sup>

#### VII. FOURTH INDICTMENT – GENERAL SULPHIDE IS CRIMINALLY LIABLE AS A SUPERIOR FOR ATTACKING HOSPITAL IN DUMOSA.

Captain Phosphide attacked the hospital under General Sulphide’s orders. The hospital was not a legitimate military target, contrary to General Sulphide’s unfounded claim. The ICTY Appeals Chamber underscored that there is an absolute prohibition on the targeting of civilian objects in customary international law.<sup>33</sup> General Sulphide had the required mental element, having given the order to attack the hospital; Captain Phosphide also fulfilled this when following the order.

The hospital was accorded protection; it is prohibited to attack a zone established to shelter the wounded, sick and civilians from hostilities.<sup>34</sup> Places designated for the sole

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<sup>26</sup> Wilmhurst and Breau (2007), *Perspectives on the ICRC Study on Customary International Humanitarian Law*, Cambridge University Press; Rule 1, ICRC Study on Customary IHL.

<sup>27</sup> *Prosecutor v Kordic*, ICTY-IT-95-14/2-T (2001).

<sup>28</sup> ICRC Study on Customary IHL.

<sup>29</sup> Henckaerts and Doswald-Beck (2005), *Customary International Humanitarian Law, Volume 1: Rules*, Cambridge University Press.

<sup>30</sup> Article 19 Geneva Convention IV; Article 11, AP II.

<sup>31</sup> Fact dossier, ¶2.23.

<sup>32</sup> Rule 14, ICRC Study; *Legality of Threat or Use of Nuclear Weapons*, ICJ Reports (1996), p.226; Security Council Resolution 1894 (2009).

<sup>33</sup> Corrigendum January 2005; *Prosecutor v Strugar*, IT-01-42-T.

<sup>34</sup> Article 18, Geneva Convention IV; Henckaerts (2005), *Customary IHL*, *supra* note 29; Rules 20, 35, ICRC Study.

protection of civilians, including hospitals, cannot be the object of military operations.<sup>35</sup> Thus, the attack on the hospital was illegal.<sup>36</sup>

### VIII. FIFTH INDICTMENT – GENERAL SULPHIDE IS CRIMINALLY LIABLE AS A SUPERIOR FOR ATTACKING HOSPITAL MARKED WITH THE RED CRYSTAL.

It is illegal to attack a building marked with one of the distinctive emblems of the Geneva Conventions,<sup>37</sup> as committed by Captain Phosphide under General Sulphide's orders.<sup>38</sup>

General Sulphide intended the hospital to be the object of attack. It is imputed on him that he knew the hospital was emblem-marked. The absolute prohibition of attacks against specially protected objects applies here.<sup>39</sup> Article 18 of Geneva Convention IV states that civilian hospitals shall be marked by the emblems provided in Article 38 of Geneva Convention I. Article 12, AP II further states that the emblems shall be displayed by medical units and shall be respected. The Red Crystal enjoys equal status with the distinctive emblems of the Geneva Conventions.<sup>40</sup> The ICRC has always promoted the protection of attacks against objects marked with its emblems.<sup>41</sup>

Having served with the UN forces, General Sulphide ought to know objects marked with emblems of the Geneva Conventions are inviolable unless misused. The mental element only requires that the perpetrator intended the building marked with the emblem as the primary objective of attack, not an incidental target.

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<sup>35</sup> Resolution 2675 (XXV).

<sup>36</sup> Article 8(2)(e)(iv), Rome Statute.

<sup>37</sup> Article 8(2)(e)(ii), Rome Statute; Rule 20, ICRC Study; Henckaerts (2005), *Customary IHL*, *supra* note 29.

<sup>38</sup> Fact dossier, ¶2.22, 2.24.

<sup>39</sup> *Supra* note 33.

<sup>40</sup> Article 2(1), AP III.

<sup>41</sup> Jennings, C., *Red Cross/ Red Crescent Emblem*, Crimes of War, retrieved from <http://www.crimesofwar.org/thebook/redcross-redcrescent.html> February 1, 2010; Somalia: Somali Red Crescent compound hit by mortar, International Committee of the Red Cross, April 2009, Retrieved from <http://www.icrc.co.za/web/eng/siteeng0.nsf/htmlall/somalia-news-140409?opendocument> February 1, 2010.

Captain Phosphide's forces did not recognize the emblem due to General Sulphide's failure in discharging his duty to properly train them on the law governing armed conflicts.<sup>42</sup> Paragraph 7, Security Council Resolution 1894 requires all parties to the conflict to train armed forces about IHL and other laws, and ensure that all orders and instructions comply with them.

**IX. SIXTH INDICTMENT - GENERAL SULPHIDE IS CRIMINALLY LIABLE AS A SUPERIOR FOR CAUSING THE DEATHS OF TWO SOLDIERS AND A CIVILIAN BY SERGEANT BROMIDE.**

Having command responsibility over Sergeant Bromide makes General Sulphide criminally liable as a military commander for acts committed by him.<sup>43</sup>

Under Article 8(2)(c)(i)-1, it is war crime to murder those placed *hors de combat* by detention, which Sergeant Bromide committed when he killed the two captured soldiers. Sergeant Bromide also committed war crime under Article 8(2)(e)(i), which forbids civilians being the object of an attack, when he killed the villager.

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<sup>42</sup> *Krnojelac Appeal*, ICTY-IT-97-25-A.

<sup>43</sup> Rome Statute, Article 28(b); *Akayesu*, *supra* note 4; *Yamashita*, *supra* note 15.



**PRAYERS**

The prosecution humbly prays for this honorable Court to declare General Sulphide criminally liable for the following war crimes:

- 1) Conscripting or enlisting children under the age of fifteen years into the Bigland armed forces;
- 2) Declaring that no quarter will be given;
- 3) Attacking the civilian population;
- 4) Attacking a hospital;
- 5) Attacking a hospital which was marked with the Red Crystal emblem;
- 6) Causing the murder of two soldiers and a civilian.

**RESPECTFULLY SUBMITTED,**

**AGENTS FOR THE PROSECUTION**