

**EIGHTH SYMBIOSIS LAW SCHOOL,
PUNE – INTERNATIONAL CRIMINAL
TRIAL ADVOCACY COMPETITION
[SICTA – 2023]**

APRIL 20, 2023 – APRIL 23, 2023

॥ वसुधैव कुटुम्बकम् ॥

PREVIOUS YEAR BEST MEMORIAL

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**SEVENTH SYMBIOSIS LAW SCHOOL, PUNE- INTERNATIONAL CRIMINAL TRIAL
ADVOCACY COMPETITION, 2022**

BEFORE

TRIAL CHAMBER I, INTERNATIONAL CRIMINAL COURT

The Hague, The Netherlands

THE PROSECUTOR

PROSECUTION

v.

VICTOR YANAKOVICH

DEFENSE

DEFENDANT CHARGED WITH

War Crime of Murder under Article 8 (2)(c) of the Rome Statute

WRITTEN SUBMISSIONS ON BEHALF OF THE DEFENSE

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Date:[April 12, 2022]

TRIAL CHAMBER I

Before: Judge _____, the Presiding Judge
Judge _____, and
Judge _____,

**SITUATION IN THE REPUBLIC OF TITAN
IN THE CASE OF
THE PROSECUTOR V. VICTOR YANAKOVICH**

PUBLIC

**Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of
the Prosecutor Against Victor Yanakovich**

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LIST OF ABBREVIATIONS

ABBREVIATION		EXPANSIONS
¶	-	Paragraph
AJ	-	Appeals Judgement
AW	-	Arrest Warrant
Art.	-	Article
IHL	-	International Humanitarian Law
ed.	-	edition
ECJ	-	European Court of Justice
EOC	-	Elements of Crimes
Id	-	Ibid
i.e.	-	Id est
ICCPR	-	International Covenant on Civil and Political Rights
ICC	-	International Criminal Court
Rome Statute	-	International Criminal Court Statute
ICTR	-	International Criminal Tribunal for Rwanda
ICTY	-	International Criminal Tribunal for the Former Yugoslavia
Mr.	-	Mister
NGO	-	Non-Governmental Organisation
NIAC	-	Non International Armed Conflict

OTP	-	Office of the Prosecutor
pp.	-	Page
PTC	-	Pre-Trial Chamber
Res.	-	Resolution
TJ	-	Trial Judgement
UN	-	United Nations
UNCLOS	-	United Nations Convention on the Law Of the Sea
UNCRC	-	United Nations Convention on Child Rights
UNHCHR	-	United Nations High Commissioner for Human Rights
v.	-	Versus

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STATEMENT OF FACTS

1. The Sovereign Republic of Titan (“**Titan**”) is a country divided into provinces with each province exercising a degree of self-governance from the historical perspective. Titan is a permanent member of the United Nations Security Council, a member of the World Trade Organisation and known for its civil rights model. The population of Titan comprises three major communities: the Targarians, represented by the Targarian Liberation Force (“**TLF**”), the Orionions, represented by the Orionion Federal Communion (“**OFC**”) and the Mora. The larger portion of the population consists of the Targarians and Orionions.
2. Titan shares its border with Galador, a country which invests three percent (3%) of its GDP in its defence and infrastructure, and shares hostile relations with Titan. Galador and Titan are parties to the Rome Statute and the Geneva Conventions (including the additional protocols thereto).
3. The federal government of Titan has been controlled by the TLF since 1975. After the 2013 elections, OFC occupied the federal seat, headed by Mr. Charlie Fox as the President of Titan. The TLF denounced the 2013 elections and underwent an internal restructuring, with calls to create a system of local self-governance in Tango. The senior-most members called “elders” initiated a recruitment drive for the formation of a TLF militia in attempts to disrupt governance in Titan through the use of aggressive protest methods. The local press statistics recorded a total of 140 attacks carried out in different cities of Titan linked directly or indirectly to TLF during the period of August 2013 to February 2019.
4. Mr. Victor Yanakovich (*hereinafter*, the Accused) served as the Chief Technician for Project Hawk from April 2015 to November 2020, responsible for both- administrative control as well the technical development of Project Hawk. From 2010 to 2015, Victor served at the Ministry of Defense of Titan as an External Consultant, an expert in the field of weaponization of artificial intelligence and later on, as an expert in the conceptualization of autonomous drones for Titan. Prior to 2010, the accused served on the board of multiple weapon manufacturers based in Russia, France and Australia.

5. Since then, the accused is believed to have built close ties with the Orionion commanders of the Titanian military and false allegations raised to have transferred illegitimate financial kickbacks to these commanders through unverified related party transactions, related to him, directly or indirectly. This is believed to have allowed Victor to gain access to the top brass of the OFC and its leader.
6. Victor is also the former director of 3MZ Inc. (“**3MZ**”), with a reputation in the area of advanced weaponization, and known to be under scrutiny in the neighbouring states for fuelling unrest by supplying rebel forces of Galador with advanced military-grade weapons.
7. Titan witnessed multiple protests in the first term of the OFC government in light of several alleged allegations of discrimination and arbitrary exercise of power against the Targarian community. On December 14, 2019, the President of Titan, Charlie Fox, ordered a full-frontal assault to crush all resistance arising in the Tango region. Titan started a policy of mass arrests as well against any groups or associations formed with links to the Targarians.
8. In May 2020, reports claimed the use of drones by Charlie Fox to suppress the rebellion in Tango. This was later confirmed by investigation, that by June 2020, the firepower of the highest grade and drones developed under Project Hawk were engaged in an indiscriminate counter-offensive against the identified leaders of TLF. Reports suggested a sharp spike in violence during the period of May 2020 to July 2020 between the two communities leading to several casualties, claimed to be committed by Charlie Fox, the President and Jack Rider, the Military Commander, along with the accused in this case.
9. On July 26, 2020, information received by Jack Rider referred to a potential assembly organizing in Tango by the elders to run a sizeable participation drive for TLF’s militia. It also indicated towards attempts made by TLF to instigate Targarian soldiers of Titan’s army to rebel against it and become defectors fighting for the cause of the Targarians. In response, Jack Rider and the accused, along with 4 additional army officers, examined the population distribution and topography of the Holy Cross School and its adjoining

areas. The school was located in the moderately dense population of Targarians, local tribals and few Orionion families. The documents submitted by the ICC Prosecutor as a part of the preliminary investigation indicate that two army officers participating in the meeting emphasised upon the identified site to be a sensitive zone, with vulnerable groups, such as children.

10. The meeting by majority of 4:2 voted to conduct a strike covering the entire compound of the Holy Cross School, taking on record the objections raised by the minority two officers highlighting that such an operation may be found to be “*excessive, abusive and against established norms of the army*”. Thereafter, the entire operation to target the members of TLF’s militia was planned by Jack Rider, with orders being given to the accused as to the execution of the plan. Around 3 p.m. on July 26th, 2020, extremely graphic visuals of the massacre caused on the grounds of the School were circulated on the internet concerning the mass killings.
11. Taking note of the incident, the ICC Prosecutor decided to conduct a preliminary investigation into the situation with special emphasis on the roles played by Charlie Fox, Jack Rider and Victor Yanakovich based on a reference received from Galador. In parallel, on October 13th, 2020, the United Nations established a Truth Commission for Titan to intervene in the situation and pacify the warring factions in the country. In November 2020, a ceasefire and truce were announced between TLF and OFC, with both parties committing to work towards a peaceful resolution of all differences. Charlie Fox was asked to resign and a transitional government was established, composed of representatives from both the Targarians and the Orionions.

PROCEDURAL HISTORY AND PRELIMINARY MATTER

12. *August 24, 2020*: Galador referred to the ICC Prosecutor the situation with respect to the conflict in Titan, including the attacks held on July 26, 2020, on the Holy Cross School in Titan (“Situation”).
13. *October 01, 2020*: The Office of the Prosecutor released a preliminary report with respect to the Situation in Titan to be, in its opinion, inadequate to qualify the legal

standards governing the jurisdiction of the Court with reference to *Article 17(1)(d) of the Statute*.

14. *October 7, 2020*: Galador filed an application under *Article 53(3)(a) of the Statute*, before the Chamber, to review the decision made by the Office of the Prosecutor with respect to the incident that occurred on July 26th, 2020.

15. *February 03, 2021*: the ICC Chamber acceded to the request made by Galador, requesting the Prosecutor to reconsider its decision not to investigate the attack on civilians and children on July 26, 2020, on the principle that the death of 270 children and 100 adults does not reach the scale of atrocities required to trigger the jurisdiction of the Court. Additionally requested that any contradictory information on the issue of whether a set of act(s) amount to a crime under the jurisdiction of the ICC. Considering the aforementioned findings, this Chamber concluded that the decision of the Prosecutor to not investigate the attack was held to be invalid and, the Office of the Prosecutor, thereafter, directed to reconsider its decision.

16. *January 05, 2022*: The Pre-Trial Chamber confirmed the charges of ‘War Crime of Murder’ towards the accused and committed the accused to the Trial Chamber for Trial.

ISSUES PRESENTED

A.

WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF WAR CRIME OF MURDER COVERED UNDER ART. 8 OF ICC STATUTE?

B.

WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW?

C.

WHETHER VICTOR YANAKOVICH CAN BE HELD ACCOUNTABLE FOR COMMITTING THE WAR CRIME OF MURDER AND GRAVE BREACHES OF IHL?

SUMMARY OF ARGUMENTS

[A.] VICTOR YANAKOVICH CANNOT BE PROSECUTED FOR THE COMMISSION OF WAR CRIME OF MURDER UNDER ART. 8 OF THE ROME STATUTE

1. There is absence of substantial evidence against Victor Yanakovich for conviction for the crime alleged.
2. The Contextual Elements of Art. 8(2)(c) have not been met as *[a.]* there is an absence of an armed conflict not of an international character, *[b.]* there is an absence of nexus between the alleged offence and any NIAC present, *[c.]* Victor Yanakovich was not aware of the factual circumstances that established the existence of any armed conflict.
3. The Specific Elements of Art. 8(2)(c) have not been satisfied as *[i.]* the perpetrator did not kill persons and *[ii.]* such persons were civilians taking no active part in hostilities.

[B.] VICTOR YANAKOVICH CANNOT BE PROSECUTED FOR THE COMMISSION OF GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW UNDER GENEVA CONVENTIONS AND ITS ADDITIONAL PROTOCOLS

Victor Yanakovich's conduct and actions have not violated the principles of International Humanitarian Law- *[1.]* the principle of 'protection of non-combatants', *[2.]* the principle of 'distinction', *[3.]* the principle of 'proportionality' and *[4.]* the principle of 'prohibition of employing prohibited weapons'.

[C.] VICTOR YANAKOVICH CANNOT BE HELD ACCOUNTABLE FOR COMMITTING THE WAR CRIME OF MURDER THROUGH CO-PERPETRATION

1. Victor Yanakovich is not criminally responsible under Art. 25(3)(a) of the Rome Statute as the *[i.]* the objective elements are not satisfied and *[ii.]* the subjective elements are not satisfied.
2. Victor Yanakovich did not have any intent or knowledge of the crime committed as *[a.]* he did not intend to cause the collateral damage, *[b.]* he was not aware that the event would occur in the ordinary course of event.

ARGUMENTS IN DETAILS

[A] WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF WAR CRIME OF MURDER COVERED UNDER ART. 8 OF ICC STATUTE IN COUNTRY TITAN?

[A.1] THERE IS ABSENCE OF SUBSTANTIAL EVIDENCE AGAINST MR. VICTOR YANAKOVICH.

The Prosecutor must provide sufficient evidence to establish substantial grounds to believe the accused committed the alleged crimes¹. The provided evidence must be compelling beyond mere theory or suspicion and provide concrete, tangible proof². The accused is presumed to be innocent until the prosecutor establishes his guilt³.

For a conviction, each element of the particular offence charged must be established beyond reasonable doubt⁴. The standard “‘beyond reasonable doubt’ connotes that the evidence establishes a particular point and it is beyond dispute that any reasonable alternative is possible”⁵. It is required that “the trial chamber be satisfied that there is no reasonable explanation of evidence other than the guilt of the accused”⁶. This standard of proof at trial requires that “a Trial Chamber may only find an accused guilty of a crime if the Prosecution has proved each element of that crime and of the mode of liability, and any fact which is

¹ Rome Statute for the Establishment of the International Criminal Court, 2187 U.N.T.S. 90, July 1 2002, Art. 61(7), “**Rome Statute**”.

² Prosecutor v. Lubanga, ICC-01/04-01/06, Pre-Trial Chamber Judgment, “**Lubanga**”, ¶¶37, 39, (Jan. 29, 2007).

³ Rome Statute, Art. 66.

⁴ Rome Statute, Art. 66(3); Augustin Ngirabatware v. Prosecutor, MICT-12-29-A, Appeal Chamber Judgment, “**Ngirabatware**”, ¶20, (Dec. 18, 2014).

⁵ Ngirabatware, Appeals Chamber, ¶20; *see also*, Prosecutor v. Mrkšić and Šljivančanin, IT-95-13/1-A, Appeals Chamber, “**Mrkšić and Šljivančanin**”, ¶220, (Int’l Crim. Trib. for the Former Yugoslavia May 5, 2009); *see also*, Prosecutor v. Halilović, IT-01-48, Appeals Chamber, “**Halilović**”, ¶111, (Int’l Crim. Trib. for the Former Yugoslavia Oct. 16, 2007).

⁶ Ngirabatware, Appeals Chamber, ¶20; *see also*, Prosecutor v. Milošević, IT-98-29/1-A, Appeals Chamber, “**Milošević**”, ¶20 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 12, 2009); Mrkšić and Šljivančanin, Appeals Chamber, ¶220; Prosecutor v. Martić, IT-95-11, Appeals Chamber, “**Martić**”, ¶61 (Int’l Crim. Trib. for the Former Yugoslavia Oct. 8, 2008).

indispensable for the conviction, beyond reasonable doubt”⁷. Therefore, Victor Yanakovich is innocent as the prosecution has failed to establish his guilt through concrete evidence beyond reasonable doubt.

[A.1.i] The contextual element for Art. 8 has not been met.

The gravity threshold⁸ specified in Art. 8(1) of the ICC Statute is absent. The contextual elements of Art. 8(2)(c) are not satisfied as there is [a.] absence of NIAC, [b.] absence of nexus between the alleged offence and NIAC, and [c.] Victor Yanakovich was not aware of the factual circumstances that established the existence of an armed conflict.

[A.1.i.a] Absence of an “armed conflict not of an international character”.

NIAC is a protracted armed confrontation between the government armed forces and the forces of one or more armed groups⁹. The armed confrontations between the government forces of OFC and TLF does not qualify the threshold of NIAC as there is [1.] absence of intensity in the conflict and [2.] the party does not qualify as organized armed groups¹⁰.

[A.1.i.a.1] There was no intensity in the armed conflict.

⁷ Mrkšić and Šljivančanin, Appeals Chamber, ¶220; *see also*, Prosecutor v. Blagojević and Jokić, IT-02-60, Appeals Chamber, “**Blagojević and Jokić**”, ¶226 (Int’l Crim. Trib. for the Former Yugoslavia May 9, 2007).

⁸ Office of the Prosecutor, *Letter Concerning Communication on the Situation in Iraq*, INTERNATIONAL CRIMINAL COURT, 8 (Feb. 9, 2006).

⁹ Lubanga, Trial Chamber, ¶512; A. CULLEN, THE CONCEPT OF NON-INTERNATIONAL ARMED CONFLICT IN INTERNATIONAL HUMANITARIAN LAW 117-139 (Cambridge University Press, 2010); A. Cullen and M.D. Oberg, ‘Prosecutor v. Ramush Haradinaj et al.: The International Criminal Tribunal for the Former Yugoslavia and the Threshold of Non-International Armed Conflict in International Humanitarian Law’ ASIL, vol. 12, issue 7, (2008); W.A. SCHABAS, THE UN INTERNATIONAL CRIMINAL TRIBUNALS: THE FORMER YUGOSLAVIA, RWANDA AND SIERRA LEONE 229 (Cambridge University Press, 2007).

¹⁰ Prosecutor v. Tadić, IT-94-1-T, Trial Chamber, “**Tadić**”, ¶562, (Int’l Crim. Trib. for the Former Yugoslavia May 7, 1997).

The intensity of the armed conflict is decided on a case-to-case basis¹¹. In determining intensity, the Chamber may consider the duration¹² of the conflict, the frequency of the acts of violence and military operations, the nature of weapons employed, displacement of civilians and territorial control by opposition¹³.

In the present case, there is no evidence of the number of government forces involved and no description as to the weapons employed. There is no evidence suggesting that the displacement of civilians took place. Therefore, the criteria of intensity is absent in the present conflict.

The armed interactions do not qualify the threshold of intensity required to qualify as a NIAC as it is required to exceed “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature”¹⁴. In the present case, there is no evidence to prove that the armed interactions between TLF and OFC qualified as instances of protracted armed violence¹⁵, rather than sporadic acts of violence¹⁶. It qualifies as OFC’s “war on terrorism”.

[A.1.i.a.2] The parties were not organized armed groups.

¹¹Prosecutor v. Rutaganda, ICTR-96-3-T, Trial Chamber I, “**Rutaganda**”, ¶93, (Dec. 6, 1999).

¹² The Prosecutor v. Bemba Gombo, ICC-01/05-01/08, “**Bemba Gombo**”¶140;*see also*, Confirmation Decision, ¶235; Lubanga, Trial Chamber, ¶¶538, 545, 546 & 550; Katanga Trial, ¶¶1217-1218; Prosecutor v. Kordić and Čerkez, IT-95-14/2-A, Appeals Chamber Judgment, “**Kordić and Čerkez**”, ¶341, (Int’l Crim. Trib. for the Former Yugoslavia Dec. 17, 2004); Prosecutor v. Limaj et al., IT-03-66-T, Trial Chamber Judgment, “**Limaj et al.**”¶¶171-173 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 30, 2005); Prosecutor v. Delalić et al., IT-96-21-T, Trial Chamber, “**Čelebići**”, ¶186 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998) ; ICTY, Tadić Trial, ¶562; Prosecutor v. Haradinaj et al., IT-04-84-T, Trial Chamber Judgment, “**Haradinaj et al.**”, ¶49, (Int’l Crim. Trib. for the Former Yugoslavia Apr. 3, 2008).

¹³ Limaj et al., Trial Chamber, ¶168.

¹⁴ Rome Statute, Art. 8(2)(f), ¶1.

¹⁵ Tadić, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, ¶70, (Int’l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995); Tadić, Trial Chamber, ¶562.

¹⁶ Rome Statute, Art. 8(2)(f), ¶1.

When assessing ‘organization’ criteria, the Chamber may consider the force or group’s internal hierarchy, the command structure and rules, the extent to which the military equipment, including firearms, are available; the force or group’s ability to plan military operations and put them into effect; and the extent, seriousness and intensity of any military involvement¹⁷. None of these factors are individually determinative¹⁸.

In the present case, the TLF does not indicate internal hierarchy nor does it indicate any structure of command and rule. This is evidenced by the fact that throughout the conflict, there was no identification of a single uniform leader or group of commanders to lead towards a common goal. Therefore, the criteria of ‘intensity’ and ‘organization’ do not qualify the required threshold, failing to qualify the circumstances as NIAC.

However, the Trial Chamber has held that the criterions of intensity and sufficient degree of organisation is used solely for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganized and short-lived insurrections or terrorist activities, which are not subject to IHL¹⁹. The conflict between OFC and TLF does not reach the threshold of NIAC or internal armed conflict, but amounts to OFC’s war on terrorism against TLF. Ergo, the jurisdiction of Art. 8(2)(c) and Art. 8(2)(e) of the Rome Statute cannot efficiently cover the conflict between OFC and TLF.

Even in absence of strict definition of terrorism under international law, certain international regulations define terrorism as an involvement of an act performed to intimidate civilian population, or an act of compelling the government or international organizations to do or abstain from the performance of any particular act²⁰. Recent law proposals place a threshold of destabilising the government, intimidation of population with “attacks upon a persons’ life which may cause death”²¹ and extensive destruction to a Government²².

¹⁷ Lubanga, Trial Chamber, ¶537.

¹⁸ *Id.*

¹⁹ Tadić, Trial Chamber, ¶562.

²⁰ International Convention for the Suppression of the Financing of Terrorism, Art. 2(b).

²¹ Proposal for a Directive of the European Parliament and of the Council on Combating Terrorim and Replacing Council Framework Decision 2002/475/JHA on Combating Terrorism, Art. 3(2).

TLF's actions share a common intent i.e. destabilising the OFC government. The TLF "was quick to denounce the elections as arbitrary and unfair"²³ when OFC won the federal elections in 2013²⁴. The "party also underwent an internal restructuring... as a mark of protest against the 2013 elections"²⁵. The TLF engaged in severe violence "against the critical infrastructure of Titan"²⁶. TLF's political backing permitted an "internal militia to coerce the government into surrendering before the Targarian leaders"²⁷. It instigated Targarian soldiers of the Titan army "to rebel against the army and become defector fighting for the cause of the Targarians"²⁸. TLF employed such tools and devices which are commonly adopted by terrorist groups, such as hiding among the population and intending to use civilians to mask their presence²⁹. These actions are essential to take into account for establishing nexus with terrorism.

There are instances of national liberations movements with armed conflicts occurring in exercise of right of self-determination³⁰. However, no circumstances indicate the same in the present case. There is absence of justification on part of TLF to engage in severe violence against a democratic government voluntarily.

Titan is a democratic nation, recognized for "its civil rights model"³¹, with OFC elected through democratic passage. The opposition (TLF) failed to undergo legal and democratic methods to oppose and remove the OFC government. They have employed methods of terror and violence for propagation.

²² Proposal for a Directive of the European Parliament and of the Council on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA on Combating Terrorism, Art. 3(2).

²³ 7th Symbiosis Law School, Pune- International Criminal Trial Advocacy Competition, 2022, "**Compromis**", ¶6.

²⁴ Compromis, ¶6.

²⁵ *Id.*

²⁶ Compromis, ¶13.

²⁷ *Id.*

²⁸ Compromis, ¶17.

²⁹ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 18.

³⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts "**API**" of 10 June 1977, Art. 1(4).

³¹ Compromis, ¶1.

Thus, the armed struggle against TLF was a war on terror and does not fall under the scope of NIAC.

[A.1.i.b.] Absence of nexus between the alleged offence and NIAC.

There must be a nexus³² between the alleged offence and a situation of armed conflict (international or non-international)³³. The existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed³⁴.

War crime charges were dismissed by the Court on the basis that the defendant's acts did not contribute, not even in the least, to the accomplishment of the Rwandan Armed Forces (RAF) in its conflict with the Rwandan Patriotic Forces (RPF)³⁵.

In the present case, Victor Yanakovich (DW1) did not act in furtherance of any armed conflict present. 3MZ was operating and responding within the sphere of business exigencies³⁶. Further, he exercised limited role as his actions were not performed in an authoritative role and received orders from superiors³⁷. Victor's position in Project Hawk was

³² Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶70, (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995); Tadić, Opinion and Judgment, ¶561, (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997); Prosecutor v. Aleksovski, IT-95-14/1-T, Trial Chamber Judgment, "**Aleksovski**", ¶43, (Int'l Crim. Trib. for the Former Yugoslavia Jun. 25, 1999).

³³ ICC, Elements of Crime, UN Doc. PCNICC/2000/1/Add. 2 (2000), "**Elements of Crime**"; K. DORMAN, L. DOSWALD-BECK & R. KOLB, ELEMENTS OF WAR CRIMES UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: SOURCES AND COMMENTARY, (Cambridge University Press, 2003).

³⁴ Rutaganda, Appeals Chamber, ¶58.

³⁵ The Hague District Court, Mpambara, Mar. 23, 2009, LJN:BK0520, Rechtbank's Gravenhage, 09/750009-06, ¶60.

³⁶ Compromis, Witness Testimonials, Defence Witness-1, pp. 21.

³⁷ Compromis, Witness Testimonials, Defence Witness-1, pp.20-21.

limited to paperwork and coordination between human resources³⁸ and service providers³⁹ cannot be held liable for the offensives designed, controlled and executed by the army⁴⁰.

[A.1.i.c.] Victor Yanakovich was not aware of factual circumstances that established the existence of any armed conflict.

The ICTR and ICTY have held the requirement of aider or abettor to be aware of the essential elements of the crime committed by the principal offender, including the principal offender's state of mind⁴¹. Recent jurisprudence places a threshold of volitional element in acceptance of the final result in addition to the knowledge requirement⁴². As testified by Victor Yanakovich, he is neither accountable for the actions of the OFC nor was he aware of the factual circumstances present⁴³.

[A.2] THE SPECIFIC ELEMENTS OF ART. 8(2)(C) HAVE NOT BEEN SATISFIED.

[A.2.i] The perpetrator did not kill one or more persons.

The Elements of Crimes⁴⁴ requires that for the accused to be charged with war crime of murder, one essential element must be fulfilled- the perpetrator killed, or caused the death of one or more persons⁴⁵. The Pre-Trial Chamber of ICC has held that the material elements

³⁸ Compromis, Witness Testimonials, Defence Witness- 2, pp. 23.

³⁹ *Id.*

⁴⁰ Compromis, Witness Testimonials, Defence Witness- 2, pp. 23; ICRC, *Command responsibility and failure to act*, Advisory Service on International Humanitarian Law, April 2014.

⁴¹ Aleksovski, Appeals Chamber, ¶162; Blagojević and Jokić, Trial Chamber, ¶727; Prosecutor v. Krnojelac, IT-97-25-T, Trial Chamber Judgment, “**Krnojelac**”, ¶90, (Int'l Crim. Trib. for the Former Yugoslavia Mar. 15, 2002).

⁴² Prosecutor v. Oric, IT-03-68-T, Trial Chamber Judgment, “**Oric**”, ¶288, (Int'l Crim. Trib. for the Former Yugoslavia Jun. 30, 2006); Prosecutor v. Blaškić, IT-95-14-T, Trial Chamber Judgment, “**Blaškić**” ¶286, (Int'l Crim. Trib. for the Former Yugoslavia Mar 3, 2000); Prosecutor v. Bagilishema, ICTR-95-1A-T, Trial Chamber Judgment, “**Bagilishema**”, ¶32, (Jun. 7, 2001).

⁴³ Compromis, Witness Testimonials, Defence Witness- 1, pp. 20-21.

⁴⁴ Elements of Crime.

⁴⁵ Elements of Crime, Art. 7.

of murder are “that the victim is dead”⁴⁶ and that the death must “result from the act of murder”⁴⁷.

The standard set and prescribed for the perpetrator’s act is that it must be the substantial cause of the victim’s death⁴⁸. In the present case, neither has the accused killed or caused the death of any person himself, nor any death was caused on account of the acts claimed by the Prosecution to be the accused’s co-perpetration, aiding or abetting⁴⁹.

[A.2.ii] Such person or persons were either hors de combat, or were civilians, medical personnel, or religious personnel taking no active part in hostilities.

The term ‘Murder’ means that the death of the victim has resulted from an act or omission of the accused committed with the intent to kill, or with the intent to cause serious bodily harm which the perpetrator should reasonably have known would lead to death⁵⁰.

In the present case, the attack was directed at a legitimate military target and at combatants⁵¹. There is absence of Victor Yanakovich’s “intent to kill”⁵² the civilians present in the building alongside the militants. Further, the loss of civilians qualifies as collateral damage, as the attack was not directed towards them⁵³.

⁴⁶ Bemba Gombo, ¶132.

⁴⁷ *Id.*

⁴⁸ Prosecutor v. Marques (Los Palos case), No. 09/ 2000, Judgment, Special Panel for Serious Crimes, Dili District Court, 11 December 2001, ¶¶ 644–649; Prosecutor v. Lino de Carvalho, No. 10/2001, Judgment, 18 March 2004, pp. 12–13; Prosecutor v. A. Martins, No. 11/2001, Judgment, Special Panel for Serious Crimes, Dili District Court, 13 November 2003.

⁴⁹ Compromis, Witness Testimonials, Defence Witness- 1, pp. 20.

⁵⁰ Prosecutor v. Kvočka et al., IT-98-30/1-A, Appeals Chamber Judgment, “**Kvočka et al.**,” ¶261, (Int’l Crim. Trib. for the Former Yugoslavia Feb.28, 2005); Kordić and Čerkez, Appeals Chamber, ¶37; Čelebići, Appeals Chamber, ¶423.

⁵¹ Compromis, Witness Testimonials, Prosecutor Witness-2, pp.18.

⁵² Kvočka et al. Appeals Chamber, ¶261; Kordić and Čerkez Appeals Chamber, ¶37; Čelebići Appeals Chamber, ¶423.

⁵³ Compromis, Witness Testimonials, Prosecutor Witness-2, pp.18.

[B.] WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW.

The establishment of ICTY and ICTR and their resulting jurisprudence recognized that serious violations of customary or conventional IHL constitute war crimes in NIACs⁵⁴. However, this is in the absence of legitimate military targets and military necessity⁵⁵. The prosecution has failed to establish that the circumstances occurred in the absence of military necessity and legitimate military objects.

Victor Yanakovich's conduct and actions have not violated International Humanitarian Law's fundamental principles- **[B.1]** the principle of 'protection of non-combatants', **[B.2]** the principle of 'distinction', **[B.3]** the principle of 'proportionality', and **[B.4]** the principle of 'prohibition of employing prohibited weapons'.

[B.1] PRINCIPLE OF PROTECTION OF NON-COMBATANTS HAS NOT BEEN VIOLATED.

'Non-combatant' status is granted to civilians not taking a direct part in hostilities⁵⁶. The ICTY jurisprudence requires that for an accused to be charged with the violation of the principle of protection of civilians, there must be specific intent as to launching the attacks "directly" on the civilian population and absence of military necessity must be proven⁵⁷. The

⁵⁴ Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993, Art. 3 "ICTY Statute"; Statute of the International Tribunal for Rwanda, 1994, Art. 4, "**ICTR Statute**"; *see also*, Tadić, Decision on Interlocutory Appeal on Jurisdiction, IT-94-1-AR72 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995) ¶¶77, 91, 94, 97-98, 100, 102, 105-106, 112, 114, 115, 117-119, 126-127, 129-130, 143; Prosecutor v. Akayesu (Judgment) ICTR-96-4-T, "**Akayesu**", ¶¶604-605, 609, 611, 613, 616-617, (Sept. 2, 1998).

⁵⁵ Kordić and Čerkez, ¶328; Prosecutor v. Kupreškić et al., IT-95-16-T, Trial Chamber Judgment, "**Kupreškić et al.**", ¶521, (Int'l Crim. Trib. for the Former Yugoslavia Jan. 14, 2000); Blaškić case, ¶¶170, 180; Prosecutor v. Karadžić and Mladic, First Indictment, "**Karadžić and Mladic**", ¶36, Count 5 and ¶45, Count 10 (Int'l Crim. Trib. for the Former Yugoslavia Jul. 24, 1995); ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, The Hague, Jun. 14, 2000, ¶28.

⁵⁶ JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW- VOLUME I: RULES, "**CIHL Rules**", Cambridge University Press 2005, Rule 1, pp. 6.

⁵⁷ Karadžić and Mladic case, First Indictment, ¶36, Count 5 and ¶45, Count 10; Martić, Initial Indictment, July 25, 1995, ¶¶15, 17, Counts I and III; Martić case, Review of the Indictment, March 8, 1996, ¶10, ¶¶11-14; Blaškić case, Second Amended Indictment, ¶8, Count 3, (Int'l Crim. Trib. for the Former Yugoslavia April 25,

ICC Statute entails the requirement of “intentionally directing attacks”⁵⁸ on civilians and civilian population for qualification as a war crime⁵⁹. Recent jurisprudence establishes that ‘directed against’ means that “the civilian population must be the primary object of the attack and not just an incidental victim of the attack”⁶⁰.

The prosecution has failed to establish the specific intent of Victor Yanakovich in this respect and has not proven through evidence that the attack of July 26, 2020 was performed in the absence of legitimate military objectives and military necessity. The attacks were aimed at legitimate military objects and under military necessity, and the loss of civilian lives was collateral damage and incidental loss of lives for which Victor cannot be held accountable.

Military objects are “those objects which by their nature, location, purpose or use make effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage”⁶¹. This definition “provides the contemporary standard which must be used when attempting to determine the lawfulness of particular attacks”⁶².

The Holy Cross School “was the only school in the region serving close to three (3) villages and was large enough to accommodate at least 500 individuals at a time”⁶³. It was held to be appropriate “to hold a gathering of a large number of adults intending to be a part

1997); Blaškić case, ¶180; ICTY, Galić, Initial Indictment, April 24, 1998, Counts 4 and 7; ICTY, Kordić and Cerkez case, First Amended Indictment, Sept. 30, 1998, ¶¶40 and 41, Counts 3 and 5; ICTY, Kordić and Čerkez, Judgment, Feb. 26, 2001, ¶328; ICTY, Kupreškić et al., Judgment, Jan. 14, 2000, ¶521; ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, The Hague, June 14, 2000, ¶28.

⁵⁸ Rome Statute, Art. 8(2)(e)(i).

⁵⁹ *Id.*

⁶⁰ Kunarac et al, ¶90; Katanga, ¶1104; BembaGombo, ¶76; Kunarac et al., ¶¶91-92.

⁶¹ CIHL Rules, Rule 8, pp. 29.

⁶² ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, The Hague, June 14, 2000, ¶41.

⁶³ Compromis, ¶20.

of the TLF militia”⁶⁴. The School was being employed for the purpose of a “massive civil assembly”⁶⁵, which was being “convened to depict the Targarians unity and strength against the federal government”⁶⁶. The drones confirmed visuals of a militia leader and 4 militants⁶⁷, qualifying the School as a legitimate military target. The military objective was to safeguard the national security of the country.

Therefore, the attack on the Holy Cross School was not violative of the principle of protection of non-combatants as the attack was not directed upon the civilians and the school was a legitimate military target.

[B.2] PRINCIPLE OF DISTINCTION HAS NOT BEEN VIOLATED.

The principle of distinction requires that parties to an armed conflict must “at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives”⁶⁸.

CIL has established that the law of war with respect to targeting collateral damage and collateral civilian casualties is derived from the principle of discrimination, i.e., the necessity for distinction between civilians and combatants⁶⁹.

The UN Security General in 1998 report on Humanitarian Assistance, noted the changing pattern of conflicts, emphasising that “in situations of internal conflicts, whole societies are often mobilized for war and it is difficult to distinguish between combatants and

⁶⁴ Compromis, ¶20.

⁶⁵ Compromis, Witness Testimonials, Prosecutor Witness-II, pp. 17.

⁶⁶ *Id.*

⁶⁷ Compromis, Witness Testimonials, Prosecutor Witness-II, pp. 18.

⁶⁸ ICTY, Milosevic, Appeals Chamber, November 12th, 2009, (IT-98-29/1-A), ¶ 53; ICRC, How does Law Protect in War?, *Distinction*, ICRC Casebook, available at [Distinction | How does law protect in war? - Online casebook](#)

⁶⁹ JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW- VOLUME II: PRACTICE, p. 10; US, Department of Defense, Final Report to the Congress on the Conduct of the Persian Gulf War, Appendix O, The Role of the Law of War, Apr. 10, 1992, *ILM*, Vol. 31, 1992, p.621.

non-combatants”⁷⁰. This is essential to note in the present case as well, as the TLF conducted a drive to induct civilians and youth into the TLF militia, making it difficult to distinguish between combatants and civilians in the present case.

Nevertheless, the principle of distinction was complied with, as the drones employed located the targets on the basis of the data fed in of the identified leaders of the TLF⁷¹. On such data fed, the drones located these leaders and fired shots on them⁷². Further, autonomous weapons systems employed i.e., armed drones are the most accurate form of weapons system⁷³. The accuracy and efficiency of these drones was further improved by feeding “minute data obtained”⁷⁴ of the extra-judicial assassinations⁷⁵. The principle of distinction was complied with as only military targets were located and attacked and no civilians were targeted.

[B.3] PRINCIPLE OF PROPORTIONALITY HAS NOT BEEN VIOLATED.

The principle of proportionality prohibits “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be *excessive* in relation to the concrete and direct military advantage anticipated”⁷⁶.

State practice indicates that “the principle of proportionality contained a danger for the protection of the civilian population but did not indicate an alternative solution to deal with the issue of incidental damage from attacks on lawful targets”⁷⁷. The expression

⁷⁰ UN Secretary-General, Report on protection for humanitarian assistance to refugees and others in conflict situations, UN Doc. S/1998/883, Sept. 22, 1998, ¶12.

⁷¹ Compromis, ¶16.

⁷² Compromis, Witness Testimonials, Prosecutor Witness- 2, pp. 18.

⁷³ BOULANIN V. AND VERBRUGGEN M., ‘ARTICLE 36 REVIEWS: DEALING WITH THE CHALLENGES POSED BY EMERGING TECHNOLOGIES’, SIPRI, December 2017, p. 20.

⁷⁴ Compromis, ¶16.

⁷⁵ *Id.*

⁷⁶ API, Art. 51(5)(b) [emphasis added].

⁷⁷ See the statements at the Diplomatic Conference leading to the adoption of the Additional Protocols made by the German Democratic Republic (GDR, Statement at the CDDH, *Official Records*, Vol. XIV, CDDH/III/SR.7, March 18 1974, p. 56, ¶48.), Hungary (Hungary, Statement at the CDDH, *Official Records*, Vol. XIV,

“military advantage” refers to advantage anticipated from the military attack accounted as a whole and not only from isolated or specific parts of that attack⁷⁸.

The ECtHR has held that, on account of national security, it is for each State to determine “whether life was threatened by a public emergency and how far it was necessary to go in attempting to overcome the emergency”⁷⁹.

In the present case, the attack on the Holy Cross School offered a direct military advantage as it killed key TLF militia leaders⁸⁰ who were operational in the TLF’s rebel acts of destabilizing the OFC government from its legitimate power. The principle of proportionality is not violated as the attack has prevented any more armed interactions between TLF and OFC which would have resulted in higher civilian loss of lives and the military advantage gained from the present is higher than the loss of civilian lives⁸¹.

[B.4] PRINCIPLE OF PROHIBITION OF EMPLOYING OF PROHIBITED WEAPONS HAS NOT BEEN VIOLATED.

New weaponry and the employment of new technological developments in warfare, such as the autonomous drones in the present case, invokes the application of IHL⁸², primarily to the extent of Art. 36 of the Additional Protocol I to the 1949 Geneva Conventions. Art. 36 entails an obligation on a High Contracting Party to determine whether

CDDH/III/SR.8, March 19, 1974, p. 68, ¶80)), Poland (Poland, Statement at the CDDH, *Official Records*, Vol. XIV, CDDH/III/SR.8, March 19, 1974, p. 61, ¶13)), Romania (Romania, Statement at the CDDH, *Official Records*, Vol. XIV, CDDH/III/SR.31, March 14, 1974, p. 305, ¶42; see also, Statement at the CDDH, *Official Records*, Vol. XIV, CDDH/III/SR.7, March 18, 1974, p. 57, ¶55) and Syria (Syria, Statement at the CDDH, *Official Records*, Vol. XIV, CDDH/III/SR.6, March 15, 1974, p. 48, ¶38).

⁷⁸ CIHL RULES, Rule 14, pp. 49.

⁷⁹ ECtHR, *Aksoy v. Turkey*, Judgment, December 18, 1996, ¶¶ 78 and 83-84.

⁸⁰ *Compromis*, Witness Testimonials, Prosecutor Witness- 2, pp. 18.

⁸¹ *Compromis*, ¶24.

⁸² ICRC, 31st International Conference of the Red Cross and Red Crescent, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report, Geneva, October 2011, pp. 36.

the employment of new weapons, means or method of warfare would be prohibited by the Protocol or any other rule of international law applicable⁸³.

In the present case, the autonomous drones system employed do not violate any rule under the API nor under international law, as the primary precondition for such violation is absent- violation of the principle of distinction. A truly autonomous weapon must be capable of following the “law of targeting”⁸⁴ consisting of primarily distinction between civilians and combatants⁸⁵.

Autonomous drones have the capability, to varying degrees, “to make decisions without any human involvement on the identification and attack of targets”⁸⁶. The absence of human control does not necessarily render the employment of the weapon inconsistent with the principle of distinction⁸⁷. The target detection, identification and recognition phases, similar to the present case, rely on sensors that have the ability to distinguish between military and non-military targets⁸⁸. The combination of several sensors greatly enhances the discriminatory ability of the weapon⁸⁹.

In the present case, the Special Instructor for the U.S. Army has stated that the drones employed in Titan are “equipped with biometrically charged sensors, cameras and microchips powerful enough to identify targets, lock their position, adapt as per the dynamic movement of the targets and deliver, with precision, the ammunition(s)”⁹⁰. The “biometric sensors”⁹¹ of the autonomous drones employed were linked to the minute data obtained⁹² of the identified

⁸³ AP I, Art. 36.

⁸⁴ BOULANIN V. AND VERBRUGGEN M., ‘ARTICLE 36 REVIEWS: DEALING WITH THE CHALLENGES POSED BY EMERGING TECHNOLOGIES’, SIPRI, December 2017, p. 20.

⁸⁵ *Id.*

⁸⁶ McClelland, J., ‘*The review of weapons in accordance with Article 36 of Additional Protocol I*’, International Review of the Red Cross, vol. 85, no. 850 (June 2003) pp. 408-409.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Compromis, Witness Testimonials, Victim Witness- 1, pp. 25-26.

⁹¹ Compromis, Witness Testimonials, Victim Witness- 1, pp. 25.

⁹² Compromis, ¶16.

leaders of TLF⁹³. This feature of Titanian drones allowed it to fulfil the principle of distinction on July 26, 2020⁹⁴.

Autonomous weapons systems permit the military to overcome a number of operational challenges, along with providing greater speed, agility, accuracy, persistence, reach and coordination and mass⁹⁵. Autonomy of a weapon increases the ability of the military to ensure that the weapon hits only the lawful target and in some cases, with acceptable level of collateral damage⁹⁶. On July 26, 2020, the drones launched attacks only after receiving confirmed visuals of TLF militia leader and militants, which were locked in on the mainframe server of the drones⁹⁷. Additionally, the drones' attack was confirmed only when Victor locked the images of the targets on the mainframe server of the drones⁹⁸, granting even more discriminatory abilities with regard to the principle of distinction.

Further, no conventions or sources of customary international law prohibit the employment of these autonomous drones in warfare. Hence, in the present case, the principle of prohibition of prohibited weapons has not been violated as the drones employed complied with the principle of distinction and are not prohibited under international law, in full compliance of Art. 36⁹⁹.

⁹³ Compromis, ¶16.

⁹⁴ Compromis, Witness Testimonials, Prosecutor Witness-2, pp. 18.

⁹⁵ BOULANIN V. AND VERBRUGGEN M., 'ARTICLE 36 REVIEWS: DEALING WITH THE CHALLENGES POSED BY EMERGING TECHNOLOGIES', SIPRI, December 2017, p. 19; SCHARRE, P., 'THE OPPORTUNITY AND CHALLENGE OF AUTONOMOUS SYSTEMS', EDS. A.P. WILLIAMS AND SCHARRE.

⁹⁶ *Id.*

⁹⁷ Compromis, Witness Testimonials, Prosecutor Witness- 2, pp. 18.

⁹⁸ *Id.*

⁹⁹ AP I, Art. 36.

[C.] WHETHER MR. MICHAEL ZOUZI CAN BE HELD ACCOUNTABLE FOR COMMITTING WAR CRIME OF MURDER THROUGH CO-PERPETRATION?

The Pre-Trial Chamber has charged Mr. Victor Yanakovich for the offense given under Article 8 of the Rome Statute. For the determination of individual criminal responsibility, he has been charged as a direct co-perpetrator.

Under Article 66(1), the accused shall be presumed innocent until proven guilty before the Court in accordance with the applicable law. Pursuant to Article 66(2), the onus is on the Prosecution to prove the guilt of the accused. For a conviction, each element of the particular offense charged must be established “beyond reasonable doubt” which has not been established in the present case.

Moreover, the Pre-Trial Chamber in Lubanga held that the level or degree of the contribution to a crime was a central element in determining the liability of principals. In casu Victor did not contribute in any way to the events of 26 July 2020, he was carrying out his job as a software developer.

[C.I] MR. VICTOR YANAKOVICH IS NOT CRIMINALLY RESPONSIBLE UNDER ART. 25(3)(A) OF THE ROME STATUTE

Article 25(3) (a) covers the notions of direct perpetration¹⁰⁰, co-perpetration¹⁰¹ and indirect perpetration¹⁰². To establish the crime under Article 25(3) (a) of the Statute, the prosecutor has to fulfill different tests to the doctrine of co-perpetration.¹⁰³

The Defence Counsel submits that there is no reasonable basis to believe that a crime under the jurisdiction of the court has been committed under Article 25¹⁰⁴ of the Rome Statute. **[C.I.i]** The objective elements are not satisfied. **[C.I.ii]** The subjective elements are not satisfied.

¹⁰⁰ Lubanga, Pre-Trial Chamber, Decision on the confirmation of charges, ¶529.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Rome Statute, Art. 25(3)(a).

[C.I.i] The objective elements of co-perpetration are not satisfied.

In the decision on the confirmation of charges, the pre-trial chamber of *Lubanga* set out what it described as the objective elements of co-perpetration¹⁰⁵ as follows: (i) the “existence of an agreement or common plan between two or more persons”; and (ii) the “co-ordinated essential contribution made by each co-perpetrator resulting in the realization of the objective elements of the crime.”

[C.I.i.a] There was no existence of any common plan or agreement.

Addressing the first objective element (the “existence of an agreement or common plan between two or more persons”), the PreTrial Chamber held that the “plan must include an element of criminality, although it does not need to be specifically directed at the commission of a crime”¹⁰⁶. The Chamber decided that it suffices that the co-perpetrators have agreed to start the implementation of the common plan to achieve a non-criminal goal, and to only commit the crime if certain conditions are met; or that the co-perpetrators are aware of the risk that implementing the common plan (which is specifically directed at the achievement of a non-criminal goal) will result in the commission of the crime, and accept such an outcome¹⁰⁷.

The Lubanga Trial chamber suggested that the existence of a common plan can be inferred from circumstantial evidence.¹⁰⁸ Every co-perpetrator fulfills a certain task which contributes to the commission of the crime and without which the commission would not be possible.¹⁰⁹ In casu Victor’s role as a software developer was restricted to developing and programming the drones¹¹⁰. He was not involved in planning the entire attack of 26 July 2020. Being the chief of project Hawk¹¹¹, his role on 26 July 2020 was limited to putting in codes¹¹² and to feed data to improve the drone technology¹¹³. The event of 26 July was

¹⁰⁵ Lubanga, ¶923.

¹⁰⁶ Lubanga, ¶344.

¹⁰⁷ *Id.*

¹⁰⁸ Lubanga at ¶988.

¹⁰⁹ Rome Statute, Art. 25(3)(a).

¹¹⁰ Compromis, Witness Testimonials, Defence Witness-1 at pp. 20.

¹¹¹ Compromis, ¶8

¹¹² Compromis, Witness Testimonials, Defence Witness-1 at pp. 20.

¹¹³ Compromis, ¶16.

mainly a military operation which was essentially a war on terrorism as already established. Drones are not prohibited as per international law in fact it is one of the most widely used means of weapon used by States to protect their sovereignty which is exactly the present case. They are not expressly prohibited, nore are they considered to be inherently indiscriminate or perfidious¹¹⁴. Providing means of attack is also not a criminal offense as per accepted standards of international law.

The perpetrator is characterized by functional division of the criminal tasks between different co-perpetrators, who are interrelated by a common plan or agreement.¹¹⁵ The common plan or agreement forms the basis of a reciprocal or mutual attribution of the different contribution holding every co-perpetrator responsible for the whole crime.¹¹⁶ It is humbly submitted before this Hon'ble Court that the present element stipulates the existence of a common goal and agreement between the person(s) involved¹¹⁷. First of all, the accused was not part of the common plan in fact there was no common plan for the incident of July 26, 2020. Victor was just incharge of the programming of the drones which were being used for the 'war on terrorism' and the entire plan of the operation was done by Mr. Jack Rider who had effective control of the entire operation which is evident from his position of authority as a military commander¹¹⁸ and the text messages shared between Victor and his sister Jean¹¹⁹.

[C.I.i.b] The accused did not provide any essential contribution to the common plan that resulted in the commission of the relevant crime.

¹¹⁴ ICRC, *The use of armed drones must comply with laws*.

¹¹⁵ MARK KLAMBERG, COMMENTARY ON THE LAW OF THE INTERNATIONAL CRIMINAL COURT (CLICC), ISBN: 9788283481013, TORKEL OPSAHL ACADEMIC EPUBLISHER.

¹¹⁶ *Id.*

¹¹⁷ Lubanga, Pre-Trial Chamber, Decision on the confirmation of charges, ¶343.

¹¹⁸ Compromis, ¶18.

¹¹⁹ Compromis, Annexure V- Transcript of Text Messages Exchanged Between the Accused and his Sister, pp. 36.

The Lubanga Trial Chamber followed the reasoning set forth by the Pre-Trial Chamber and agreed that under the co-perpetration theory two or more individuals must act jointly within the common plan, which must include ‘an element of criminality’.¹²⁰

First of all, there is no existence of a common plan relating to the incidence of July 26, 2020 as established above. Secondly, there is no element of criminality in the action of Victor Yanakovich as he was a software developer and chief technician of Project Hawk¹²¹ and it was his duty to program the drones which is not a criminal act. As testified by him, he is neither responsible for the actions of Titans military¹²² nor did he have effective control over the event¹²³. [T]he Appeals Chamber of Popovic recalls that there is no definitive list of indicators of effective control¹²⁴. Indicators considered will necessarily depend on the case¹²⁵. The Appeals Chamber in Hadzihasanovic & Kubura recognises that the power to give orders and have them executed can serve as an indicium of effective control¹²⁶ which was exercised by Jack Rider on 26th July 2020. Jack had the superior control over the event of 26 July 2020¹²⁷ pursuant to Article 28 of the Rome Statute¹²⁸. This can be determined from Victor’s testimony¹²⁹ and his position as a military commander¹³⁰.

There is no essential contribution made by the accused that results in the realization of the objective elements of the crime.¹³¹ The Court in *Lubanga*¹³² noted that this requirement requires the existence of combined and coordinated contributions of those involved. It

¹²⁰ Lubanga, Pre-Trial Chamber, Decision on the confirmation of charges, ¶343.

¹²¹ Compromis, ¶8

¹²² Compromis, Witness Testimonials, Defence Witness-1 at pp. 20.

¹²³ *id.*

¹²⁴ Prosecutor v. Vujadin Popović Ljubiša Beara Drago Nikolić Ljubomir Borovčanin Radivoje Miletić Milan Gvero Vinko Pandurević, Case No. IT-05-88-A, ¶1860 (Int’l Crim. Trib. for the Former Yugoslavia Jan. 30, 2015).

¹²⁵ *Id.*

¹²⁶ Prosecutor v. Hadzihasanovic and Kubura, Case No. IT-01-47-A, Appeal Chamber, ¶199 (Int’l Crim. Trib. for the Former Yugoslavia April 22, 2008).

¹²⁷ Compromis, ¶22.

¹²⁸ Rome Statute, Art. 28.

¹²⁹ Compromis, Witness Testimonials, Defence Witness-1 at pp. 20.

¹³⁰ Compromis, ¶18.

¹³¹ Stakić, Trial Judgment, ¶¶478-491.

¹³² Lubanga, ¶994.

requires collective control over the crime.¹³³ The Prosecutor must prove mutual attribution, based on joint agreement or common plan. The role played by Victor in developing the drone prototypes¹³⁴ cannot be characterized as amounting to an “essential contribution” and it is insufficient to form the basis of responsibility as a co-perpetrator¹³⁵. Victor programmed the drones but the effective control laid in the hands of Jack Rider¹³⁶ on 26 July 2020.

When the objective elements of an offense are carried out by a plurality of persons acting within the framework of a common plan, only those to whom essential tasks have been assigned and who, consequently, have the power to frustrate the commission of the crime by not performing their tasks can be said to have joint control over the crime.¹³⁷

In order to form an essential contribution, the accused must have done an act, without furtherance of which, the plan would stay unattended. However, no such act is committed by the accused. Therefore, the accused has in no manner made any essential contribution rendering the allegations against him unfounded. The Prosecution has also failed to prove that Victor Yanakovich was a part of any common plan. As testified by him, he was only concerned with carrying out his job as a software developer¹³⁸ and chief technician of Project Hawk¹³⁹.

[C.I.ii] Establishment of subjective elements is absent.

The trial chamber in the judgment of *Prosecutor v. Lubanga* stated the subjective elements of co-perpetration. It stated that “[t]he Chamber [...] requires above all that the suspect fulfill the subjective elements of the crime with which he or she is charged [...]”. These subjective elements are said to be: (i) “the suspect and the other co-perpetrators [...] must all be mutually aware of the risk that implementing their common plan may result in the

¹³³ *Id.*

¹³⁴ Compromis, ¶16.

¹³⁵ Rome Statute, Art. 25(3)(a).

¹³⁶ Compromis, Witness Testimonials, Defence Witness-1 at pp. 20.

¹³⁷ Lubanga, Pre-Trial Chamber 1, Decision on the confirmation of charges, ¶347.

¹³⁸ Compromis, Witness Testimonials, Defence Witness-1 at pp. 20.

¹³⁹ *Id.*

realization of the objective elements of the crime”; and (ii) the suspect must be aware of the “factual circumstances enabling him or her to jointly control the crime.

[C.I.ii.a] The suspects must be mutually aware and mutually accept that implementing their common plan will result in the realization of the objective elements of the crimes.

Without prejudice and as established, the alleged perpetrators were not mutually aware about any common plan which is an essential element to determine liability. Victor was not involved in any common plan nor did any common plan existed. Even if a common plan existed, Victor in no circumstance had the authority to determine the implementation of the common plan as he was working under the orders of the President Mr. Charlie Fox¹⁴⁰.

[C.I.ii.b] The accused was not aware of the factual circumstances that established the existence of an armed conflict and the link between these circumstances and his conduct.

There did not exist any armed conflict as the said attack was a war on terrorism. Hence, Victor’s conduct was not related to any armed conflict. The ICTR and ICTY have held the requirement of aider or abettor to be aware of the essential elements of the crime committed by the principal offender, including the principal offender’s state of mind¹⁴¹. Recent jurisprudence places a threshold of volitional element in acceptance of the final result in addition to the knowledge requirement¹⁴². As testified by Victor Yanakovich, he is neither accountable for the actions of the OFC nor was he aware of the factual circumstances present¹⁴³. As established in *Issue A*, the said event was an war on terrorism which was carried out with due regard given to the principles of distinction, proportionality and precaution. Moreover, the attack was carried out on a military objective which the militants were using as a hiding spot. As there was no existence of any armed attack ergo the prosecution failed to establish this element also.

¹⁴⁰ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

¹⁴¹ Aleksovski, Appeals Chamber, ¶162; Blagojevic, ¶727; Krnojelac, ¶90.

¹⁴² Oric, ¶288; Blaskic, ¶286; Bagilishema, ¶32.

¹⁴³ Compromis, Witness Testimonials, Defence Witness-1 at pp. 21.

[C.II] MR. VICTOR YANAKOVICH DID NOT HAVE ANY INTENT OR KNOWLEDGE OF THE CRIME COMMITTED

“Article 30 provides that “intent” and “knowledge” means an awareness that a circumstance exists or a consequence will occur in the ordinary course of events.”¹⁴⁴ Intent and knowledge are adopted conjunctively in the Rome Statute because one cannot perform an action or cause a consequence intentionally one also has knowledge of the circumstances in which that action or consequence was committed¹⁴⁵. The defense submits the prosecution must prove that the accused had the relevant level of intent and knowledge when carrying out the material elements of the crime he is accused of¹⁴⁶.

In casu the prosecution has failed to produce single direct evidence which proves that Mr. Victor Yanakovich had the relevant level of intent and knowledge to commit the alleged crime. As testified by him, in his capacity as a chief technician of Project Hawk, he exercised very limited and constrained control.¹⁴⁷ He was only concerned with his duties as a software developer¹⁴⁸; hence, he would not take any step that would lead to the killing of civilians¹⁴⁹. This is in corroboration with the testimony of Sajul Singh¹⁵⁰ who is a former member of project Hawk¹⁵¹.

The Appeals Chamber in *Galic* has previously ruled that the perpetrator of the crime of attack on civilians must undertake the attack “wilfully” and that the latter incorporates “wrongful intent, or recklessness, [but] not ‘mere negligence’”¹⁵². In other words, the mens rea requirement is met if it has been shown that the acts of violence which constitute this crime were wilfully directed against civilians, that is, either deliberately against them or

¹⁴⁴ Lubanga, ¶79.

¹⁴⁵ Ambos Kai (ed.), Rome Statute of the International Criminal Court, Article-by-Article Commentary (4th edn., Beck/Hart/Nomos, 2021) 3008 [“Ambos”].

¹⁴⁶ Rome Statute, Art. 30(1).

¹⁴⁷ Compromis, Witness Testimonials, Defence Witness-1 at pp. 20.

¹⁴⁸ *Id.*

¹⁴⁹ Compromis, Witness Testimonials, Victim Witness-1 at pp. 25.

¹⁵⁰ Compromis, Witness Testimonials, Defence Witness-2 at pp. 22.

¹⁵¹ *Id.*

¹⁵² Galić, Appeal Judgement, ¶140, citing Galić Trial Judgement, ¶54.

through recklessness¹⁵³. The Appeals Chamber considers that this definition encompasses both the notions of “direct intent” and “indirect intent” mentioned by the Trial Chamber, and referred to by Strugar, as the mens rea element of an attack against civilians. None of this has been established by the Prosecutor in the present matter.

[C.II.i] Victor did not have intent of the crime committed

The defense argues an accused can only be considered to have had the requisite intention if he meant to engage in the conduct and, as to consequences, he either (2.II.i.a) meant to cause them or (2.II.i.b) was aware that they would occur in the ordinary course of events.¹⁵⁴

[C.II.i.a] Victor did not intend cause the collateral damage

In casu the prosecutor failed to establish any intent of Victor to cause the harm. Where the crime requires ‘conduct’, the person must ‘mean to engage in that conduct’. This is a relatively straightforward idea in criminal law, excluding unintentional conduct such as automatic or reflex behavior, and ‘accidents’. With respect to a crime of conduct, the accused is deemed to intend the conduct. As a general rule, the intent of a person to conduct the particular crime need not be proved as this follows logically from proof of the conduct itself which the Prosecutor has failed to establish in the present matter. The intention was just to counter the criminal activities of the militants¹⁵⁵.

[C.II.i.b] Victor was not aware that the event would occur in the ordinary course of events

The Pre-Trial Chamber of *Stakic* held that *mens rea* is established if the accused is aware of the risk that the objective elements of the crime may result from his or her actions or

¹⁵³ Cf. Commentary AP I, ¶3474 which defines the term “wilfully” in the following way: “the accused must have acted consciously and with intent, i.e., with his mind on the act and its consequences, and willing them (‘criminal intent’ or ‘malice aforethought’); this encompasses the concepts of ‘wrongful intent’ or ‘recklessness’, viz., the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening; on the other hand, ordinary negligence or lack of foresight is not covered, i.e., when a man acts without having his mind on the act or its consequences.”

¹⁵⁴ Art. 30(2)(a) and (b); Lubanga, ¶¶858, 865.

¹⁵⁵ Compromis, ¶13.

omissions and accepts such an outcome by reconciling himself or herself with it or consenting to it.¹⁵⁶ There must be a “specific purpose” to the commission of such crime¹⁵⁷ which has not been established by the Prosecutor. This entitles a stricter threshold than mere knowledge¹⁵⁸ which also has not been proved that Victor had knowledge of the consequences. Moreover, the intent does not extend to the consequences that flow from the act¹⁵⁹.

Awareness means that something will happen “in the ordinary course of events” is not to be equated with the accused’s awareness of a “risk” that the crime will occur, particularly if that result is improbable.¹⁶⁰ In essence, the defence suggests the concept of *dolus eventualis*, an “indirect intention” that arises when the possibility of a certain consequence is appreciated by the accused, but he proceeds with a reckless disregard as to whether it will occur, and does not form any part of Article 30¹⁶¹ of the Rome Statute¹⁶². The text of article 30¹⁶³ of the Statute does not encompass *dolus eventualis*, recklessness or any lower form of culpability.¹⁶⁴ However, none of it has been established by the Prosecutor.

Article 30 requires that the accused killed someone with intent and knowledge but the same is not established beyond a reasonable doubt. The war was a war on terrorism and was not directed against civilians because members of organised resistance groups cannot be classified as a civilian population¹⁶⁵. If civilians are incidental victims, it cannot be inferred that they were the intended object of the attack¹⁶⁶. Thus, the requirement cannot be met as the perpetrator never intended to kill anyone nor did his actions cause the death of any civilian in the ordinary course of events. Victor was merely carrying out his job as a software

¹⁵⁶ Stakić, ¶587; Lubanga, ¶80, referring to Lubanga, ¶352, which quotes this ICTY judgement.

¹⁵⁷ Bemba Gombo, ¶ 97.

¹⁵⁸ *Id.*

¹⁵⁹ Mbarushimana, Pre-Trial Chamber, ¶ 274.

¹⁶⁰ Lubanga, ¶957.

¹⁶¹ Rome Statute, Art. 30.

¹⁶² Lubanga, ¶¶81-82.

¹⁶³ Rome Statute, Art. 30.

¹⁶⁴ Lubanga, ¶82; Bemba Gombo, ¶369.

¹⁶⁵ Blaskic, Appeal Chamber, ¶113.

¹⁶⁶ The Prosecutor v. Uhuru Muigai Kenyatta, ICC-01/09-02/11, Pre-Trial Chamber, Confirmation of Charges, ¶ 82 (Jan. 23, 2012); Bemba Gombo, ¶ 76; Kunarac, Appeal Chamber, ¶ 92.

developer¹⁶⁷ and just coded the functioning of the drones¹⁶⁸ which were later effectively used by the Titans's military¹⁶⁹ who had full control of the weapons.

[C.II.ii] Victor did not have knowledge of the crime committed.

The accused should commit the alleged act with the knowledge of the larger context of the attack, specifically knowing that the acts form a broader part of such attack¹⁷⁰. Here, knowledge is not synonymous with intent¹⁷¹. Knowledge denotes the awareness that a consequence will occur in the "ordinary course of events"¹⁷². The lower threshold for knowledge of the nature of victims is that it must be proven that the accused knowingly took the risk of participating in the execution of a policy which led to the attack¹⁷³. The accused must have known or predicted the possibility that the victims of his crime could be civilians¹⁷⁴. The Defendant allegedly supplied drones with the sole knowledge that they will be used as a war on terrorism. The knowledge would entail awareness that a consequence will occur in the ordinary course of circumstances¹⁷⁵. Knowledge does not cover probable knowledge of consequence¹⁷⁶. It requires a standard of "virtual certainty"¹⁷⁷ which cannot be established beyond a reasonable doubt in the facts of the present case. The Court has spelled out that in order to characterize a certain conduct as an attack it is important to look at the intended and foreseeable consequences¹⁷⁸. The default rule of Article 30¹⁷⁹ of the ICC Statute

¹⁶⁷ Compromis, Witness Testimonials, Defense Witness-1 at pp. 20.

¹⁶⁸ Compromis, ¶16.

¹⁶⁹ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

¹⁷⁰ Rome Statute, Art. 7; Tadic, ¶ 656; Bemba Gombo Article 61, ¶ 88; Blaskic, Appeal Chamber, ¶ 124; Blaskic, Trial Chamber, ¶ 248; Prosecutor v. Kayishema, Case No. ICTR 95-1-T, Judgment, ¶¶ 133&134 (May 21, 1999) [**"Kayishema"**].

¹⁷¹ Blaskic, Appeal Chamber, ¶123-124.

¹⁷² Rome Statute, Art. 30(3).

¹⁷³ Blaskic, Appeal Chamber, ¶ 124.

¹⁷⁴ Kunarac, Trial Chamber, ¶ 435.

¹⁷⁵ Rome Statute, Art. 30 (3).

¹⁷⁶ Bemba Gombo, ¶363.

¹⁷⁷ Katanga, ¶774.

¹⁷⁸ Ntaganda, Pre-Trial Chamber 2, ¶ 46.

¹⁷⁹ Rome Statute, Art. 30.

does not accommodate any standard of *mens rea* below the threshold of knowledge of result in terms of practical certainty¹⁸⁰.

It is submitted that the accused could not have known about the collateral damage that occurred. Thus, it can be reasonably concluded that the accused was not aware that it would occur in the ordinary course of events. The contention that the accused had probable knowledge of the consequences cannot prevail because a mere possibility cannot satisfy the standards of intent¹⁸¹ under the statute¹⁸². It is apparent from the facts that the defendant did not have the requisite knowledge which is an essential to allege guilt or as continuous conduct¹⁸³. The occurrence of unforeseen intervening circumstances resulted in the unintentional deaths of the civilians¹⁸⁴. These intervening events which took place on July 26¹⁸⁵ were not premeditated and could not have been calculated by Victor. These events caused the civilian casualties¹⁸⁶ and altered the character of the act by leading to unintended deaths. The burden falls on the Prosecution to prove the *mens rea* on the part of the accused¹⁸⁷, which in the present case has not been proved. Thus, the Defendant was not aware of the factual circumstances that established the character of the act. Therefore, the Defence humbly submits that the requisite limb of 'knowledge' is not present in the instant case.

¹⁸⁰ Bemba, ¶359; Lubanga, ¶1101.

¹⁸¹ Bemba Gombo, ¶363.

¹⁸² Rome Statute.

¹⁸³ Ambos, pp. 718.

¹⁸⁴ Compromis, ¶28.

¹⁸⁵ Compromis, ¶22.

¹⁸⁶ Compromis, ¶28.

¹⁸⁷ Kayishema, ¶ 153.

PRAYER

Wherefore, in the light of the issues raised, arguments on merits, evidences supplied and authorities relied on, it is humbly prayed that:

- I. The armed conflict threshold has failed to meet and Victor Yanakovich's conduct did not take place in relation to such conflict.
- II. The allegations against Victor Yanakovich do not meet the *mens rea* and *actus reus* requirements for co-perpetration under Article 25(3)(c) of the Statute.
- III. There is no substantial evidence to prove that Victor Yanakovich committed the crimes charged with.

All of which is respectfully submitted,

ON BEHALF OF THE DEFENCE
DEFENCE COUNSEL

**SEVENTH SYMBIOSIS LAW SCHOOL, PUNE- INTERNATIONAL CRIMINAL TRIAL
ADVOCACY COMPETITION, 2022**

Before

TRIAL CHAMBER I, INTERNATIONAL CRIMINAL COURT

The Hague, The Netherlands

THE PROSECUTOR

PROSECUTION

V.

VICTOR YANAKOVICH

DEFENSE

DEFENDANT CHARGED WITH

War Crime of Murder under Article 8 (2)(c) of the Rome Statute

WRITTEN SUBMISSIONS ON BEHALF OF THE PROSECUTION

Word Count 7265

**Cour
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Internationale**

**International
Criminal
Court**



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No: **ICC-03/27-08/17**

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TRIAL CHAMBER I

Before: Judge _____, the Presiding Judge
Judge _____, and
Judge _____,

**SITUATION IN THE REPUBLIC OF TITAN
IN THE CASE OF
THE PROSECUTOR V. VICTOR YANAKOVICH**

PUBLIC

**Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the
Prosecutor Against Victor Yanakovich**

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LIST OF ABBREVIATIONS

ABBREVIATION		EXPANSIONS
¶	-	Paragraph
AJ	-	Appeals Judgement
AW	-	Arrest Warrant
Art.	-	Article
IHL	-	International Humanitarian Law
ed.	-	edition
ECJ	-	European Court of Justice
EOC	-	Elements of Crimes
Id	-	Ibid
i.e.	-	Id est
ICCPR	-	International Covenant on Civil and Political Rights
ICC	-	International Criminal Court
Rome Statute	-	International Criminal Court Statute
ICTR	-	International Criminal Tribunal for Rwanda
ICTY	-	International Criminal Tribunal for the Former Yugoslavia
Mr.	-	Mister
NGO	-	Non-Governmental Organisation

NIAC	-	Non International Armed Conflict
OTP	-	Office of the Prosecutor
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PTC	-	Pre-Trial Chamber
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STATEMENT OF FACTS

1. The Sovereign Republic of Titan (“**Titan**”) is a country divided into provinces with each province exercising a degree of self-governance from the historical perspective. Titan is a permanent member of the United Nations Security Council, a member of the World Trade Organisation and known for its civil rights model. The population of Titan comprises three major communities: the Targarians, represented by the Targarian Liberation Force (“**TLF**”), the Orionions, represented by the Orionion Federal Communion (“**OFC**”) and the Mora. The larger portion of the population consists of the Targarians and Orionions.
2. Titan shares its border with Galador, a country which invests three percent (3%) of its GDP in its defence and infrastructure, and shares hostile relations with Titan. Galador and Titan are parties to the Rome Statute and the Geneva Conventions (including the additional protocols thereto).
3. The federal government of Titan has been controlled by the TLF since 1975. After the 2013 elections, OFC occupied the federal seat, headed by Mr. Charlie Fox as the President of Titan. The TLF denounced the 2013 elections and underwent an internal restructuring, with calls to create a system of local self-governance in Tango. The senior-most members called “elders” initiated a recruitment drive for the formation of a TLF militia in attempts to disrupt governance in Titan through the use of aggressive protest methods. The local press statistics recorded a total of 140 attacks carried out in different cities of Titan linked directly or indirectly to TLF during the period of August 2013 to February 2019.
4. Mr. Victor Yanakovich (*hereinafter*, the Accused) served as the Chief Technician for Project Hawk from April 2015 to November 2020, responsible for both- administrative control as well the technical development of Project Hawk. From 2010 to 2015, Victor served at the Ministry of Defense of Titan as an External Consultant, an expert in the field of weaponization of artificial intelligence and later on, as an expert in the conceptualization of autonomous drones for Titan. Prior to 2010, the accused served on the board of multiple weapon manufacturers based in Russia, France and Australia.

5. Since then, the accused is believed to have built close ties with the Orionion commanders of the Titanian military and alleged to have transferred illegitimate financial kickbacks to these commanders through unverified related party transactions, related to him, directly or indirectly. This has allowed Victor to gain access to the top brass of the OFC and its leader.
6. Victor is also the former director of 3MZ Inc. (“**3MZ**”), a shell company with a reputation in the area of advanced weaponization, and known to be under scrutiny in the neighbouring states for fuelling unrest by supplying rebel forces of Galador with advanced military-grade weapons.
7. Titan witnessed multiple protests in the first term of the OFC government in light of several alleged allegations of discrimination and arbitrary exercise of power against the Targarian community. On December 14, 2019, the President of Titan, Charlie Fox, ordered a full-frontal assault to crush all resistance arising in the Tango region. Titan started a policy of mass arrests as well against any groups or associations formed with links to the Targarians.
8. In May 2020, reports claimed the use of drones by Charlie Fox to suppress the rebellion in Tango. This was later confirmed by investigation, that by June 2020, the firepower of the highest grade and drones developed under Project Hawk were engaged in an indiscriminate counter-offensive against the identified leaders of TLF. Reports suggested a sharp spike in violence during the period of May 2020 to July 2020 between the two communities leading to several casualties, claimed to be committed by Charlie Fox, the President and Jack Rider, the Military Commander, along with the accused in this case.
9. On July 26, 2020, information received by Jack Rider referred to a potential assembly organizing in Tango by the elders to run a sizeable participation drive for TLF’s militia. It also indicated towards attempts made by TLF to instigate Targarian soldiers of Titan’s army to rebel against it and become defectors fighting for the cause of the Targarians. In response, the accused and Jack Rider, along with 4 additional army officers, examined the population distribution and topography of the Holy Cross School and its adjoining areas. The school

was located in the moderately dense population of Targarians, local tribals and few Orionion families. The documents submitted by the ICC Prosecutor as a part of the preliminary investigation indicate that two army officers participating in the meeting emphasised upon the identified site to be a sensitive zone, with vulnerable groups, such as children.

10. The meeting by majority of 4:2 voted to conduct a strike covering the entire compound of the Holy Cross School, taking on record the objections raised by the minority two officers highlighting that such an operation may be found to be “*excessive, abusive and against established norms of the army*”. The accused and Jack Rider, thereafter, planned the entire operation to target the members of TLF’s militia. Around 3 p.m. on July 26th, 2020, extremely graphic visuals of the massacre caused on the grounds of the School were circulated on the internet concerning the mass killings.
11. Taking note of the incident, the ICC Prosecutor decided to conduct a preliminary investigation into the situation with special emphasis on the roles played by Charlie Fox, Jack Rider and Victor Yanakovich based on a reference received from Galador. In parallel, on October 13th, 2020, the United Nations established a Truth Commission for Titan to intervene in the situation and pacify the warring factions in the country. In November 2020, a ceasefire and truce were announced between TLF and OFC, with both parties committing to work towards a peaceful resolution of all differences. Charlie Fox was asked to resign and a transitional government was established, composed of representatives from both the Targarians and the Orionions.

PROCEDURAL HISTORY AND PRELIMINARY MATTER

12. *August 24, 2020*: Galador referred to the ICC Prosecutor the situation with respect to the conflict in Titan, including the attacks held on July 26, 2020, on the Holy Cross School in Titan (“Situation”).

13. *October 01, 2020*: The Office of the Prosecutor released a preliminary report with respect to the Situation in Titan to be, in its opinion, inadequate to qualify the legal standards governing the jurisdiction of the Court with reference to *Article 17(1)(d) of the Statute*.
14. *October 7, 2020*: Galador filed an application under *Article 53(3)(a) of the Statute*, before the Chamber, to review the decision made by the Office of the Prosecutor with respect to the incident that occurred on July 26th, 2020.
15. *February 03, 2021*: the ICC Chamber acceded to the request made by Galador, requesting the Prosecutor to reconsider its decision not to investigate the attack on civilians and children on July 26, 2020, on the principle that the death of 270 children and 100 adults does not reach the scale of atrocities required to trigger the jurisdiction of the Court. Additionally requested that any contradictory information on the issue of whether a set of act(s) amount to a crime under the jurisdiction of the ICC. Considering the aforementioned findings, this Chamber concluded that the decision of the Prosecutor to not investigate the attack was held to be invalid and, the Office of the Prosecutor, thereafter, directed to reconsider its decision.
16. *January 05, 2022*: The Pre-Trial Chamber confirmed the charges of ‘War Crime of Murder’ towards the accused and committed the accused to the Trial Chamber for Trial.

ISSUES PRESENTED

A.

WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF WAR CRIME OF MURDER COVERED UNDER ART. 8 OF ROME STATUTE?

B.

WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW?

C.

WHETHER VICTOR YANAKOVICH CAN BE HELD ACCOUNTABLE FOR COMMITTING THE WAR CRIME OF MURDER AND GRAVE BREACHES OF IHL?

SUMMARY OF ARGUMENTS

[A.] VICTOR YANAKOVICH CAN BE PROSECUTED FOR THE COMMISSION OF WAR CRIME OF MURDER UNDER ART. 8 OF THE ROME STATUTE

1. The Contextual Elements of Art. 8(2)(c) have been satisfied in the present case as *[a.]* there was an existence of an armed conflict not of an international character, *[b.]* the war crime of murder was in context of and associated with NIAC, and *[c.]* Victor Yanakovich was aware of the factual circumstances that established the existence of an armed conflict.
2. The Specific Elements of Art. 8(2)(c) have been satisfied in the present case as *[a.]* he killed one or more persons, *[b.]* such persons were civilians, and *[c.]* Victor Yanakovich was aware of the factual circumstances that established this status.

[B.] VICTOR YANAKOVICH CAN BE PROSECUTED FOR THE COMMISSION OF GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW UNDER GENEVA CONVENTIONS AND ITS ADDITIONAL PROTOCOLS

Victor Yanakovich's conduct and actions led to grave breaches of IHL and the violation of its fundamental principles- *[1.]* the principle of 'protection of non-combatants', *[2.]* the principle of 'distinction', *[3.]* the principle of 'proportionality', and *[4.]* the principle of 'prohibition of employing prohibited weapons'.

[C.] VICTOR YANAKOVICH CAN BE HELD ACCOUNTABLE FOR COMMITTING THE WAR CRIME OF MURDER

Victor Yanakovich is criminally responsible for committing War Crime of Murder in country Titan:

1. Through co-perpetration committed under Art. 25(3)(a) of the Rome Statute- *[i.]* there was an existence of a common plan or agreement, *[ii.]* Victor Yanakovich contributed in the commission of the crime, *[iii.]* Victor Yanakovich was aware of the consequences arising in the ordinary course of events due to the implementation of the common plan, *[iv.]* Victor Yanakovich was aware of his essential contribution to the implementation of the common plan, *[v.]* Victor Yanakovich was aware of the factual circumstances that

established the existence of an armed conflict and the link between these circumstances and his conduct.

2. Victor had intent and knowledge of the crime committed under Art. 30 of the Rome Statute- *[i.]* Victor committed the crime with intent, *[ii.]* Victor committed the crime with knowledge.

ARGUMENTS IN DETAIL

[A.] WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR THE COMMISSION OF WAR CRIME OF MURDER COVERED UNDER ART. 8 OF THE ROME STATUTE IN COUNTRY TITAN?

Victor Yanakovich is criminally responsible for commission of war crime of murder as [1.] the contextual elements as well as [2.] the specific elements under Art. 8(2)(c) are fulfilled in the present case.

[A.1] THE CONTEXTUAL ELEMENTS OF ART. 8(2)(C) HAVE BEEN SATISFIED

The term “Murder” means that the death of the victim result from an act or omission of the accused committed with the intent to kill, or with the intent to cause serious bodily harm which the perpetrator should reasonably have known might lead to death¹. For establishing-

“the culpability of an accused for the crime of violence to life, health, and physical or mental well-being of persons (murder) as a serious violation of Art. 3 common to the Geneva Conventions and of Additional Protocol II, the Prosecution bears the onus of proving the following specific elements:

- 1. The death of a victim taking no active part in the hostilities;*
- 2. That the death was the result of an act or omission of the accused or one or more persons for whom the accused is criminally responsible;*
- 3. The intent of the accused or of the person or persons for whom he is criminally responsible*
 - i. To kill the victim; or*

¹ Prosecutor v. Kvočka et al, IT-98-30/1-A, Appeals Chamber Judgment, “**Kvočka et al.**” , ¶261 (Int’l Crim. Trib. for the Former Yugoslavia Feb. 28, 2005); Prosecutor v. Kordić and Čerkez, IT-95-14/2-A, Appeals Chamber Judgment, “**Kordić and Čerkez**”, ¶37, (Int’l Crim. Trib. for the Former Yugoslavia Dec. 17, 2004); Prosecutor v. Delalić et al., IT-96-21-A, Appeals Chamber Judgment, “**Čelebići**”, ¶423, (Int’l Crim. Trib. for the Former Yugoslavia Feb. 20, 2001).

- ii. *To wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death*”²

The contextual elements of Art. 8(2)(c) have been fully satisfied in the present.

[A.I.a] There is an existence of an armed conflict not of an international character.

The existence of armed conflict is the most fundamental requirement for the establishment of subject-matter jurisdiction in the prosecution of war crimes³. For drone attacks to be categorized as a war crime, the attack must occur in the context of an armed conflict. The definition of a war crime is a violation of IHL that results in individual criminal liability⁴. NIAC is a protracted armed confrontation between government armed forces and the forces of one or more armed groups⁵. [i.] The armed confrontation between government forces and [ii] Targarian Liberation Force (TLF) qualifies to be a NIAC, as it reached a minimum level of intensity and the armed groups were organized⁶.

² Setako, ICTR-04-81-A, Appeals Chamber Judgment, “**Setako**”, ¶257, (Sept. 28, 2011); *see also*, Setako, ¶246; Kvočka et al., Appeals Chamber, ¶261; Kordić and Čerkez, Appeals Chamber, ¶37; Čelebići, Appeals Chamber, ¶423.

³ WILLIAM A. SCHABAS, NADIA BERNAZ, ROUTLEDGE HANDBOOK OF INTERNATIONAL CRIMINAL LAW 145 (Feb. 2010).

⁴ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31.

⁵ Prosecutor v. Lubanga, ICC-01/04-01/06, Trial Chamber Judgment, “**Lubanga**”, ¶512, (Mar. 14, 2012); A. CULLEN, THE CONCEPT OF NON-INTERNATIONAL ARMED CONFLICT IN INTERNATIONAL HUMANITARIAN LAW 117-139 (Cambridge University Press, 2010); A. Cullen and M.D. Oberg, ‘Prosecutor v. Ramush Haradinaj et al.: The International Criminal Tribunal for the Former Yugoslavia and the Threshold of Non-International Armed Conflict in International Humanitarian Law’ ASIL, vol. 12, issue 7, (2008); W.A. SCHABAS, THE UN INTERNATIONAL CRIMINAL TRIBUNALS: THE FORMER YUGOSLAVIA, RWANDA AND SIERRA LEONE 229 (Cambridge University Press, 2007).

⁶ Prosecutor v. Tadić, ICTY-IT-94-1-T, Trial Chamber, “**Tadić**”, ¶562, (Int’l Crim. Trib. for the Former Yugoslavia May 7, 1997).

[A.1.a.i] There was intensity in the armed conflict

In determining intensity, the chamber⁷ should take into account, the seriousness of attacks which need not be continuous and uninterrupted⁸ and potential increase in armed clashes, their spread over territory and over a period of time, the duration⁹ of the violence, the number of casualties as well as the number of persons and type of forces partaking in the fighting.

A non-international armed conflict need not produce massive loss of life. The ICTY had concluded in 2008 that even though the armed confrontations between the Macedonian forces and a national liberal organization resulted in 168 casualties over the course of the year, it constituted a non-international armed conflict¹⁰.

On July 26, 2020, the attack on children and civilians in the Holy Cross School resulted in the death of 270 children and approx. 100 adults along with injuries sustained by others¹¹, with the Chamber recognizing the scale of atrocities qualifying the threshold for the invocation of the jurisdiction of the Court¹².

The attack was performed in pursuit of an illegitimate military objective in the ongoing NIAC between the government, OFC and the organized armed group TLF continuing since

⁷ Prosecutor v. Haradinaj, IT-04-84-T, Trial Chamber Judgment, “**Haradinaj et al.**”, ¶49, (Int’l Crim. Trib. for the Former Yugoslavia Apr. 3, 2008).

⁸ The Prosecutor v. Bemba Gombo, ICC-01/05-01/08, “**Bemba Gombo**”, ¶140.

⁹ *Id.*; see also, Confirmation Decision, ¶235; Lubanga, Trial Chamber, ¶¶538, 545, 546 & 550; ICC, Prosecutor v. Katanga, ICC-01/04-01/07, Trial Chamber Judgment, “**Katanga**”, ¶¶1217-1218, (Mar. 7, 2014); Kordić and Čerkez, Appeals Chamber, ¶341; Prosecutor v. Limaj et al., IT-03-66-T, Trial Chamber Judgment, “**Limaj et al.**”, ¶¶171-173, (Int’l Crim. Trib. for the Former Yugoslavia Nov. 30, 2005); Čelebići et al. Trial Chamber, ¶186; Tadić Trial Chamber, ¶562; Haradinaj et al. Trial Chamber, ¶49.

¹⁰ The Prosecutor v. Boškoski, IT-04-82-T, Trial Chamber, “**Boškoski**”, ¶¶244 & 249, (Int’l Crim. Trib. for the Former Yugoslavia Jul. 10, 2008).

¹¹ 7th Symbiosis Law School, Pune- International Criminal Trial Advocacy Competition, 2022, “**Compromis**”, ¶28.

¹² *Id.*, Compromis.

March 2019 to September 2019¹³ preceded by skirmishes and attacks¹⁴ resulting in “The Situation” on July 26, 2020. The resultant damage demonstrates a sufficient degree of intensity in the conflict which exceeds “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature”.¹⁵

[A.I.a.ii] The armed groups were organized

For establishing the existence of a NIAC, it must be proved that armed groups show a sufficient degree of organization to enable them to carry out protracted armed confrontations¹⁶.

An “organized armed group”¹⁷ is the armed wing of a non-state party to a non-international armed conflict. When deciding if a body was an organized armed group, the force or group’s ability to plan military operations and put them into effect; and the extent, seriousness, and intensity of any military involvement, group’s internal hierarchy; the command structure should be taken into account.¹⁸

In casu, the TLF conducted a drive to form a TLF militia comprising of young civilian men and women¹⁹ and was responsible for engaging in severe violence against critical infrastructure of Titan and for the abductions of key political leaders of OFC²⁰. The TLF shows a hierarchical structure present and the ability to implement the basic obligations of the Common Art. 3²¹ which is recognized as the ‘minimum yardstick’²² binding in all armed conflicts and

¹³ Compromis, ¶12.

¹⁴ Compromis, ¶7.

¹⁵ Rome Statute for the Establishment of the International Criminal Court, 2187 U.N.T.S. 90, July 1 2002, Part-V, Art. 61, “**Rome Statute**”.

¹⁶ Lubanga, Trial Chamber, ¶536; Katanga, Trial Chamber, ¶1185; Bemba Gombo, Trial Chamber, ¶¶134-136.

¹⁷ How Does Law Protect In War, ARMED GROUPS, available at <https://casebook.icrc.org/glossary/armedgroups>.

¹⁸ Lubanga Trial, ¶537.

¹⁹ Compromis, ¶7.

²⁰ Compromis, ¶13; *see also*, Compromis, ¶6.

²¹ Boškoski, Trial Chamber, ¶195.

²² Military and Paramilitary Activities in and against Nicaragua, (Nicaragua v. United States), Merits, 1986 I.C.J. Rep. 14 (June 27), ¶¶218-219, “**Nicaragua case**”.

reflects ‘elementary considerations of humanity’²³, violations of which are inadmissible in all cases, including civil strife²⁴. The TLF fulfils the requirement of a ‘minimum of organization’²⁵ which the ICRC requires for parties in an armed conflict. The attacks conducted by the TLF during the period of August 2013 and February 2019 indicates their organization²⁶, ability to plan and implement operations.

[A.1.b] The War Crime of Murder was in context of and associated with NIAC.

Another requirement is that of a nexus²⁷ between the alleged offence and a situation of armed conflict (international or non-international)²⁸. It is not necessarily required that a perpetrator must himself be a member of a party to the armed conflict²⁹ and his conduct need not be solely governed by the armed conflict³⁰.

²³ ICJ, Nicaragua case, ¶¶218-219.

²⁴ Tadić case, ¶119.

²⁵ ICRC Commentary of 2016, ARTICLE 3: CONFLICTS NOT OF AN INTERNATIONAL CHARACTER, at ¶423, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC>, “ICRC Commentary”.

²⁶ Katanga Trial Chamber, ¶1185; Bemba Gombo, ¶233.

²⁷ Tadić (IT-94-1-AR72), Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, (Oct. 2, 1995) ¶70; Tadić (IT-94-1-T), Opinion and Judgment, (May 7, 1997) ¶561; Prosecutor v. Aleksovski, IT-95-14/1-T, Trial Chamber Judgment, “**Aleksovski**”, ¶43, (Int’l Crim. Trib. for the Former Yugoslavia June 25, 1999).

²⁸ Elements of Crime, ICC, 18 UN Doc. PCNICC/2000/1/Add. 2 (2000); K. DORMANN, L. DOSWALD-BECK & R. KOLB, ELEMENTS OF WAR CRIMES UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: SOURCES AND COMMENTARY, (Cambridge University Press, 2003).

²⁹ Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-A, Appeals Chamber, “**Akayesu**”, ¶444, (Jun. 1, 2001); *See also*, Prosecutor v. Kunarac et al., IT-96-23-T & IT-96-23/1-T, Trial Chamber, “**Kunarac et al.**”, ¶407, (Int’l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001); Kunarac et al., Appeals Chamber, ICTY, ¶58.

³⁰ Katanga, Trial Chamber, ¶1176.

As noted by the ICTY, a particular act must be ‘closely related to the hostilities occurring in the parts of territories for that act to be committed in the context of an armed conflict’³¹. The use of force “must take place in an armed conflict situation and must have a nexus with the armed conflict”³². A war crime “is shaped by or dependent upon the environment- the armed conflict- in which it is committed”³³. The ICTR held that the Common Art. 3 requires a close nexus between violations and the armed conflict, with the perpetrator to the crime having a special relationship with one party to the conflict³⁴.

The ICTY Trial Chamber held in the *Brđanin* judgment that “crimes committed by combatants and by members of forces accompanying them while searching for weapons during an armed conflict, and taking advantage of their position, clearly fall into the category of crimes committed “in the context of the armed conflict””³⁵.

The ICTR Appeals Chamber has held that “convictions for war crimes require that the offences charged be closely related to the armed conflict”³⁶. However, the required nexus “need not be a causal link, but that the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit the crime, his decision to commit it, the manner in which it was committed”³⁷. Hence, if it can be established that the perpetrator acted in

³¹ Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 1995, ¶70. This interpretation has been followed by the ICC; see ICC, Katanga Trial, ¶1176, Bemba Trial, ¶¶142-144.

³² ICRC, THE USE OF FORCE IN ARMED CONFLICTS, p. 5; see also, Akayesu, Trial Chamber, ¶636; Kunarac, Appeals Chamber, ¶¶58-59.

³³ Kunarac et al., Appeals Chamber, ¶58. See also, Kunarac et al. Appeal ¶¶57 & 59; Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, ¶¶67 and 70, (Oct. 2, 1995); see also Kunarac et al, ¶568.

³⁴ Akayesu, Appeals Chamber, ¶444; see also, Akayesu, Appeals Chamber, ¶¶435-443.

³⁵ Prosecutor v. Brđanin, IT-99-36-A, Appeals Chamber Judgment, “**Brđanin**”, ¶256, (Int’l Crim. Trib. for the Former Yugoslavia Apr. 3, 2007); see also, Kunarac et al, Appeals Chamber, ¶58.

³⁶ Prosecutor v. Semanza, ICTR-97-20-A, Appeals Chamber Judgment, “**Semanza**”, ¶¶368-369, (May 20, 2005); see also, Semanza, Trial Chamber, ¶¶435-436 and ¶¶516-522.

³⁷ Prosecutor v. Setako, ICTR-04-81, Appeals Chamber Judgment, “**Setako**”, ¶249, (Sept. 28, 2011); see also, Prosecutor v. Rutaganda, ICTR-96-3-A, Appeals Chamber Judgment, “**Rutaganda**”, ¶569, (May 26, 2003);

furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict³⁸.

Victor Yanakovich took advantage of the armed conflict, worked in close association with the OFC³⁹ and ruined the lives of the Targarian community⁴⁰ for his personal gains in order to increase his market capitalization all over the world⁴¹. NIAC against the Targarians “allowed 3MZ, and Accused, to gain direct financial benefits”⁴², which were “exchanged on the promise that 3MZ will continue to provide high-quality spare parts used to make and assemble the drones used in Project Hawk”⁴³. The Truth Commission in its Ground Report was of the view that the accused “was motivated to continue the supply of such weapons for his personal and professional gains”⁴⁴.

The drones engaged in the suppression of the opposition from the Tango region⁴⁵ were acquired from the United States strictly for defence purposes and provided for a 1.5 year training period in US for training with active warfare using drone technology⁴⁶. Victor Yanakovich served as the chief technician of Project Hawk during the period of the crime committed⁴⁷ and later came to be appointed as head of Titan’s of the drone programme⁴⁸. He completed the

Kunarac et al, Appeals Chamber, ¶¶58; ICTY, Prosecutor v. Stakić, IT-97-24-A, Appeals Chamber Judgment, “Stakić”, ¶¶342, (Mar. 22, 2006); Tadić, Appeal Decision on Jurisdiction, ¶¶70.

³⁸ Setako, Appeals Chamber, ¶249; *see also*, Rutaganda, Appeals Chamber, ¶569; Kunarac et al., Appeals Chamber, ¶58; Stakić, Appeals Chamber, ¶342; Tadić, Appeal Decision on Jurisdiction, ¶70.

³⁹ Compromis, ¶20; *see also*, Compromis, ¶9.

⁴⁰ Compromis, ¶28.

⁴¹ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 19; Defence Witness-1 at pp. 21; Prosecutor Witness-1 at pp. 16.

⁴² Compromis, Annex-II- Ground Report | Truth Commission of Titan, pp. 31.

⁴³ Compromis, Annex-II- Ground Report | Truth Commission of Titan, pp. 32.

⁴⁴ *Id.*

⁴⁵ Compromis, ¶16.

⁴⁶ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16; *Id.*

⁴⁷ Compromis, ¶8.

⁴⁸ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

training period in the training period in US and “was given absolute control over the offensive”⁴⁹ being the only qualified person with understanding of the algorithms of the drones employed⁵⁰. He exercised “enormous control over the active use of these advanced weapons technology systems against the Targarian Community”⁵¹.

Victor Yanakovich’s actions played a crucial role in the Situation occurring on 26th July, 2020 demonstrating the NIAC circumstances in Titan.

[A.I.c] The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

The *nullum crimen sine lege*⁵² principle does not require that an accused knew the specific legal definition of each element of a crime he committed⁵³. It suffices that he was aware of the factual circumstances that is implicit in the terms “took place in the context of and was associated with”⁵⁴, e.g., that armed forces were involved in the armed conflict⁵⁵.

Victor was aware of the conflict between the Targarians and Orionions represented by the TLF and OFC respectively⁵⁶. He was further aware that the Holy Cross School was the only school in the region accommodating to Targarians as well⁵⁷. Victor Yanakovich could sufficiently foresee the consequences of the attack on July 26, 2020, considering the planning and execution stages were performed on the same day⁵⁸.

⁴⁹ *Id.*

⁵⁰ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

⁵¹ Compromis, Annex-II-Ground Report | Truth Commission of Titan, pp. 32.

⁵² Rome Statute, Art. 22.

⁵³ Katanga, Pre-Trial Chamber, ¶297; *see also*, ICTY, Kordić and Čerkez, Appeals Chamber, ¶311.

⁵⁴ Bemba Gombo, ¶146; *see also*, Kordić and Čerkez, Appeals Chamber, ¶311.

⁵⁵ Kordić and Čerkez, Appeals Chamber, ¶311.

⁵⁶ Compromis, ¶2.

⁵⁷ Compromis, ¶20.

⁵⁸ Compromis, Witness Testimonials, Prosecutor Witness- 2, pp. 16-18; Compromis, ¶20.

[A.2] THE SPECIFIC ELEMENTS OF ART. 8(2)(C) HAVE BEEN SATISFIED.

The war crime under Art. 8(2)(c) of the Statute⁵⁹ has been committed as Victor Yanakovich beyond all reasonable doubts.

[A.2.i] The perpetrator killed one or more persons.

The accused's actions resulted in the loss of lives of 270 children and 100 adults "aggravated by injuries sustained by many others"⁶⁰. The Trial Chamber held that the resultant loss "does reach the scale of atrocities required to trigger" the invocation of Art. 8⁶¹. This, pre conditionally, qualifies the threshold of "one or more persons" to charge Victor Yanakovich with 'War Crime of Murder'.

[A.2.ii] Such person or persons were either hors de combat, or were civilians, medical personnel, or religious personnel taking no active part in hostilities

'Civilians' in NIAC are "all persons who are neither members of state armed forces nor members of an organized armed group"⁶². The children and adults killed in the attack of July 26, 2020, qualify as 'civilians' as there is no evidence provided on part of the accused of their status as militants or combatants.

The ICTY has defined a civilian as "anyone who is not a member of the armed forces or of an organized military group belonging to a party to the conflict"⁶³. For the ICC, a civilian is

⁵⁹ Rome Statute, Art. 8(2)(c).

⁶⁰ Compromis, ¶28.

⁶¹ Compromis, ¶28.

⁶² ICRC, How Does Law Protect in War?, *Civilian Population*, ICRC Casebook, available at [Civilian population | How does law protect in war? - Online casebook \(icrc.org\)](#).

⁶³ Prosecutor v. Galić, IT-98-29-T, Trial Chamber Judgment, "Galić", ¶47, (Int'l Crim. Trib. for the Former Yugoslavia Dec. 5, 2005).

anyone who is not a member of the State or non-State armed forces⁶⁴. Further, IHL requires that in circumstances of doubt as to status of persons whether civilians or militants, they must be believed to be civilians and protected from attack⁶⁵.

In the present case, the civilians harmed qualify as civilians as there is absence of evidence as to any participation in hostilities or affiliation to any of the belligerent parties involved in the conflict.

[A.2.iii] Victor Yanakovich was aware of the factual circumstances that established such status.

The accused was aware of the factual circumstances establishing the situation of non-international armed conflict. The children and adults killed by the attack of July 26th, 2020 qualify as to the status of ‘civilians’ protected under IHL from attacks.

Further, the accused himself recognizes the persons harmed by the attack to be ‘civilians’⁶⁶. This establishes the accused’s knowledge as to the circumstances establishing such status of the persons affected.

[B.]WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW UNDER GENEVA CONVENTIONS AND ITS ADDITIONAL PROTOCOLS?

The establishment of ICTY and ICTR and their resulting jurisprudence recognized that serious violations of customary or conventional IHL constitute war crimes in NIACs⁶⁷.Victor

⁶⁴ Katanga, Trial Chamber, ¶ 788.

⁶⁵ JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW- VOLUME I: RULES, “CIHL Rules”, Cambridge University Press 2005, Rule 6, pp. 23-24.

⁶⁶ Compromis, Witness Testimonials, Defence Witness- 1, pp. 20.

Yanakovich's conduct and actions lead to grave breaches of IHL and violation of its fundamental principles.

[B.1] PRINCIPLE OF PROTECTION OF NON-COMBATANTS HAS BEEN VIOLATED.

Protecting civilians or non-combatants is “a cornerstone of IHL”⁶⁸. ‘Non-combatant’ status is granted to civilians who do not take a direct part in hostilities⁶⁹. Even when military medical and religious personnel are members of the armed forces, they are granted non-combatant status⁷⁰. Civilians are to be protected against attacks “unless and for such time as they take a direct part in hostilities”⁷¹.

There must be practical measures in place to prevent errors and minimize the harm to civilians. These standards of IHL have been codified in the 1949 Geneva Conventions, the 1907 Hague Conventions, the 1977 Additional Protocols to the Geneva Conventions, and are intertwined with customary international law⁷². The ICTY jurisprudence has recognized that

⁶⁷ Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993, Art. 3 “**ICTY Statute**”; Statute of the International Tribunal for Rwanda, 1994, Art. 4, “**ICTR Statute**”; *see also*, ICTY, Prosecutor v. Tadić (Decision on Interlocutory Appeal on Jurisdiction) IT-94-1-AR72 (October 2, 1995) ¶¶77, 91, 94, 97-98, 100, 102, 105-106, 112, 114, 115, 117-119, 126-127, 129-130, 143; Akayesu, Trial Chamber, ¶¶604-605, 609, 611, 613, 616-617.

⁶⁸ ICRC, How does Law Protect in War? *Protection of Civilians*, ICRC Casebook, available at [Protection of Civilians | How does law protect in war? - Online casebook \(icrc.org\)](https://www.icrc.org/Protection-of-Civilians).

⁶⁹ CIHL Rules, Rule 1, pp. 6.

⁷⁰ CIHL Rules, Rule 3, pp. 13.

⁷¹ CIHL Rules, Rules 1, 6, pp. 3-8, 19-24.

⁷² R. CRYER, D. ROBINSON AND S. VASILIEV, AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE, 2nd ed., CUP, 2007; Galić, ¶87.

there is an “absolute prohibition on the targeting of civilians in customary international law”⁷³ and is not in absence of military necessity⁷⁴.

The prohibition on directing attacks against civilians is also embedded in Protocol II, Amended Protocol II and Protocol III to the Convention on Certain Conventional Weapons⁷⁵. Under the Rome Statute, “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” constitutes a war crime in non-international armed conflicts⁷⁶. In its Advisory Opinion, the ICJ held that the principle of protection of civilians constitutes as one of the “cardinal principles” of IHL and one of the “intransgressible principles of international customary law”⁷⁷, ruling that states must “never use weapons that are incapable of distinguishing between civilian and military targets”⁷⁸.

Accused failed to comply with the principle of protection of non-combatants. He actively formulated the plan that was executed on July 26, 2020, on the Holy Cross School which qualifies as a civilian area, with children and adults taking no active part in hostilities present⁷⁹. No measures were taken to protect the civilians. Victor’s act of the attack and omission to take

⁷³ Prosecutor v. Blaškić, IT-95-14-A, Appeals Chamber Judgment, “**Blaškić**”, ¶109, (Int’l Crim. Trib. for the Former Yugoslavia Jul. 29, 2004); *see also*, Prosecutor v. Hadžihasanović et al., Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, IT-01-47, “**Hadžihasanović et al.**” ¶¶44, (Int’l Crim. Trib. for the Former Yugoslavia Jul. 16, 2003); *see* Common Art. 3, Geneva Conventions 1949.

⁷⁴ Blaškić, Appeals Chamber, ¶109; *see also*, Hadžihasanović et al., Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003, ¶44; *see* Common Art. 3, Geneva Conventions 1949.

⁷⁵ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and other Devices, “**Protocol II**” to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, “**CCW**”, Geneva, October 10, 1980, Art. 3(2); Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996, “**Amended Protocol to the CCW**”, Geneva, October 10, 1980, Art. 3(7); Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons, “**Protocol III to the CCW**”, Geneva, October 10, 1980, Art. 2(1).

⁷⁶ Rome Statute, Art. 8(2)(e)(i).

⁷⁷ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226, ¶¶76 and 78, (Jul. 8), “**ICJ Nuclear Weapons**”.

⁷⁸ ICJ, Nuclear Weapons, ¶78.

⁷⁹ Compromis, ¶¶20, 21 and 28.

measures to protect civilians led to the “death of 270 children and close to 100 adults, aggravated by injuries sustained by many others”⁸⁰.

In 2000, Amnesty International, in its report on the NATO bombings, concluded that “in one instance, the attack on the headquarters of Serbian state radio and television (RTS), NATO launched a direct attack on a civilian object, killing 16 civilians. Such attack breached Art. 52(1) of Protocol I and therefore constitutes a war crime”⁸¹. Such condemnation must be made in the present case as the number of civilian loss of lives is comparatively higher in the present case, of which 270 are children and 100 are adults⁸², which is a grave violation of the principle of protection of non-combatants resulting in attribution of war crime to Victor.

[B.2] PRINCIPLE OF DISTINCTION

The principle of distinction requires that parties to an armed conflict must “at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives”⁸³.

The practical application of the principle requires that “those who plan or launch an attack take all feasible precautions to verify that the objectives attacked are neither civilians nor civilian objects, so as to spare civilians as much as possible”⁸⁴. The ICTY Trial Chamber noted that indiscriminate attacks, i.e., “attacks which strike civilians or civilian objects and military

⁸⁰ Compromis, ¶28.

⁸¹ Amnesty International, *NATO/Federal Republic of Yugoslavia: “Collateral Damage” or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*, AI Index EUR 70/18/00, London, June 2000, p.25.

⁸² Compromis, ¶28.

⁸³ Prosecutor v. Milošević, IT-98-29/1-A, Appeals Chamber Judgment, November 12, 2009, “**Milošević**”, ¶53, (Int’l Crim. Trib. for the Former Yugoslavia Nov. 12, 2009); ICRC, *How does Law Protect in War?*, *Distinction*, ICRC Casebook, available at [Distinction | How does law protect in war? - Online casebook \(icrc.org\)](#)

⁸⁴ Galić, ¶58.

objectives without distinction, may qualify as direct attacks against civilians”⁸⁵ expressly prohibited under AP I⁸⁶ and reflecting a well-established rule of customary law applicable in all armed conflicts⁸⁷.

The ICTY has held that intentionally directing attacks against civilian objects constitutes a serious violation of customary and convention IHL entailing individual criminal responsibility i.e. a war crime under NIACs⁸⁸. The ICTR Appeals Chamber held that there is an “absolute prohibition against the targeting of civilians in customary international law encompassing indiscriminate attacks”⁸⁹.

There is no requirement that particular areas or zones be designated as civilian or military in nature⁹⁰. Rather a distinction is to be made between the civilian population and combatants or between civilian and military objectives⁹¹. Such distinctions must be made on a “case-by-case basis”⁹². The parties to a conflict are “under an obligation to remove civilians, to the maximum extent feasible from the vicinity of military objectives and to avoid locating military objectives

⁸⁵Galić, ¶57.

⁸⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977 “API”, Art. 51(4).

⁸⁷ Galić, ¶57.

⁸⁸ Tadić, ¶¶100, 105-106 and 119; Hadžihasanović et al., IT-01-47-AR73.3, Decision on Interlocutory Appeal, ¶¶17-18, 21, 28, 30, (Mar. 11, 2005); Prosecutor v. Strugar, IT-01-42-AR72, Decision on Interlocutory Appeal, , “Strugar”, ¶¶9-10, (Int’l Crim. Trib. for the Former Yugoslavia Nov. 22, 2002); Strugar, Trial Chamber, ¶¶224-226; Kordić and Čerkez, Corrigendum to Judgment, IT-95-14/2-A, p. 2, (Jan. 26, 2005); Kordić and Čerkez, Appeals Chamber, ¶54; Prosecutor v. Kupreškić et al., IT-95-16-T, Trial Chamber Judgment, “Kupreškić et al.”, ¶¶53, 521, (Int’l Crim. Trib. for the Former Yugoslavia Jan. 14, 2000); Blaškić, Trial Chamber, ¶¶161, 164, 168, 180; Prosecutor v. Milan Martić, IT-95-11-T, Trial Chamber Judgment, “Martić”, ¶¶40, 45-46, 67-69, (Int’l Crim. Trib. for the Former Yugoslavia Jun. 12, 2007); See also, JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW- VOLUME I: RULES, Cambridge University Press 2005, Rules 7-10 and 156, pp. 25-34, 597-598.

⁸⁹ Milošević, Appeals Chamber, ¶53.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

within or near densely populated areas”⁹³. The failure to fulfil this obligation “does not relieve the attacking side of its duty to abide by the principles of distinction and proportionality when launching an attack”⁹⁴. The ICTY Trial Chamber has held that the presence of soldiers within an intentionally targeted civilian population does not alter the civilian nature of that population⁹⁵.

In a declaration adopted on the occasion of the 50th anniversary of the Geneva Conventions in 1999, the EU stated that “present-day conflicts often did not make the important distinction between combatants and civilians and that children and other vulnerable groups were targets of the conflict”⁹⁶.

In the present case, the accused has failed to comply with the principle of distinction even with the knowledge of civilians present in the targeted area⁹⁷. Victor was aware of children and adults not taking part in hostilities present in the Holy Cross School during the planning stage and execution stage of the operations⁹⁸. Nevertheless, he conducted the attack resulting in the death of 270 children and 100 adults with casualties suffered by the rest⁹⁹. The accused failed to take necessary precautionary measures possible in such circumstances such as evacuation of the civilian population neither did he comply with the principles of distinction and proportionality.

[B.3] PRINCIPLE OF PROPORTIONALITY

The principle of proportionality prohibits attacks “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage

⁹³ Galić, ¶61.

⁹⁴ *Id.*

⁹⁵ Blaškić, Trial Chamber, ¶214; *see also*, ICRC Commentary, p.612, ¶1922.

⁹⁶ REPORT PURSUANT TO PARAGRAPH 5 OF SECURITY COUNCIL RESOLUTION 837 (1993) ON THE INVESTIGATION INTO THE 5 JUNE 1993 ATTACK ON UNITED NATIONS FORCES IN SOMALIA CONDUCTED ON BEHALF OF THE UN SECURITY COUNCIL, UN Doc. S/26351, 24 August 1993, Annex, ¶9.

⁹⁷ Compromis, ¶20.

⁹⁸ *Id.*

⁹⁹ Compromis, ¶28.

anticipated”¹⁰⁰. This rule is established as a norm of CIL applicable in both international and non-international armed conflicts¹⁰¹. The principle cannot be ignored in action and in the implementation and application of the AP II¹⁰² applicable in NIAC¹⁰³. The principle has been included in the Amended Protocol II to the Convention on Certain Conventional Weapons¹⁰⁴.

The ICTY jurisprudence indicates the customary nature of this rule¹⁰⁵. The Rome Statute refers the principle as “civilian injuries, loss of life or damage being excessive” in relation to the concrete and direct overall military advantage anticipated¹⁰⁶.

The ICC has ruled that disproportionate attacks may ‘qualify as intentional attacks against the civilian population or individual civilians’ and that attacks against legitimate military objectives must nevertheless comply with the customary proportionality rule¹⁰⁷.

In the present case, number of deaths i.e., of 270 children and 100 adults, with severe casualties suffered by the rest, indicates that the attack performed on the School was disproportionate¹⁰⁸. The military advantage anticipated to be gained is minimum in comparison to the loss of lives caused, as the School posed as a mere possible location for TLF militia to

¹⁰⁰ ICRC and UNIVERSITE LAVAL, *The Principle of Proportionality in the Rules Governing the Conduct of Hostilities under International Humanitarian Law*, International Expert Meeting, 22-23 June 2016, Quebec, available at [International expert meeting report: The principle of proportionality | International Committee of the Red Cross \(icrc.org\)](#).

¹⁰¹ CIHL Rules, Rule 14, pp. 46.

¹⁰² Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, “**APII**”, of 8th June 1977.

¹⁰³ MICHAEL BOTHE, KARL JOSEPH PARTSCH, WALDEMAR A. SOLF (eds.), *NEW RULES FOR VICTIMS OF ARMED CONFLICTS*, MARTINUSNIJHOFF, The Hague, 1982, p. 678.

¹⁰⁴ Amended Protocol II to the CCW, Art. 3(8)(c).

¹⁰⁵ Martić, Review of the Indictment, ¶139; Kupreškić et al, ¶140.

¹⁰⁶ Rome Statute, Art. 8(2)(b)(iv).

¹⁰⁷ Katanga, ¶¶802, 895.

¹⁰⁸ Compromis, ¶28.

assemble and the number of civilian population not taking part in hostilities is higher than any TLF militants assembled in the location on July 26th, 2020¹⁰⁹.

An international commission investigating the attacks in Kibeho (Rwanda) in 1995 “considered that by using automatic guns and heavier weapons, such as grenades and rocket-launchers, against persons who carried guns and traditional weapons, such as machetes and stones, the Rwandan army had acted disproportionately”¹¹⁰.

In the present case, attacks were launched employing automated drones systems on unarmed civilians, and no identification of possession of firearms were captured by the video feed of the drones¹¹¹. Hence, the accused, Victor Yanakovich failed to adhere to the core principle of proportionality under IHL.

[B.4] PRINCIPLE OF PROHIBITION OF EMPLOYING OF PROHIBITED WEAPONS.

IHL ensures limiting the suffering caused by armed conflict by regulating “both the behaviour of combatants and the choice of means and methods of warfare, including weapons”¹¹². The principle acts as a two-fold prohibition on “weapons of a nature to cause superfluous injury or unnecessary suffering”¹¹³ and prohibition on “weapons that are by nature indiscriminate”¹¹⁴. Employing of weapons falling under either of these categories is a violation of IHL. The ICJ has affirmed that this prohibition is one of the “cardinal principles”¹¹⁵ of IHL¹¹⁶.

¹⁰⁹ Compromis, ¶¶ 20, 21 and 28.

¹¹⁰ RAPPORT DE LA COMMISSION INTERNATIONALE D'ENQUÊTE INDÉPENDANTE SUR LES ÉVÉNEMENTS DE KIBEHO, April 1995, pp. 9-10, Report on the Practice of Rwanda, 1997, Chapter 1.5.

¹¹¹ Compromis, Witness Testimonials, Prosecutor Witness- 2, pp. 18.

¹¹² ICRC, *Weapons*, November 30, 2011, available at [Weapons | International Committee of the Red Cross \(icrc.org\)](https://www.icrc.org/).

¹¹³ CIHL Rules, Rule 70, pp. 237-243.

¹¹⁴ CIHL Rules, Rule 71, pp. 244-250.

¹¹⁵ ICJ, Nuclear Weapons, ¶78.

¹¹⁶ CIHL Rules, Rule 71, pp. 246.

In the present case, “highly lethal and specialized drones were engaged by the government to suppress all opposition from the Tango region”¹¹⁷ and in the attack by the accused on July 26, 2020¹¹⁸. The drones employed possessed capabilities “to attack without human oversight”¹¹⁹ and “the accused was given absolute control over the offensive”¹²⁰.

The accused was employed under the TLF government in 2010 as the ‘external consultant’ specializing in the “conceptualization of autonomous drones for Titan”¹²¹. He was considered an expert in the algorithms of these drones which were engaged in the “indiscriminate counter-offensive”¹²². The machine learning programme instilled in these drones employed “taught itself to identify such a situation as one of extreme hostility and automatically prepared itself for an all-out inferno of an attack- prepared to destroy the maximum perimeter it was built to cover- which in this case was equal to the size of a standard football field”¹²³. This action is performed with the “least hesitation or buffer-time and almost absolute independence”¹²⁴ indicating the absence of discrimination required under IHL for targets¹²⁵.

All weapons, including armed drones, are subject to IHL in armed conflict situations and are required to distinguish between combatants and civilians and between military objectives and civilian objectives¹²⁶. They must be able to take “all feasible precautions in order to spare the civilian population and infrastructure, and they must suspend or cancel an attack if the expected

¹¹⁷ Compromis, Witness Testimonials, Prosecutor Witness-1, pp. 16.

¹¹⁸ Compromis, ¶32.

¹¹⁹ *supra* note, 117.

¹²⁰ *Id.*

¹²¹ Compromis, ¶8.

¹²² Compromis, ¶16.

¹²³ Compromis, Witness Testimonials, Prosecutor Witness-2, pp. 18.

¹²⁴ Compromis, Annexure-IV- Excerpt of a Report Produced and Submitted By Jack Rider, pp.35.

¹²⁵ ICRC, 31st International Conference of the Red Cross and Red Crescent, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report, Geneva, October 2011, pp.39.

¹²⁶ ICRC, *The Use of Armed Drones Must Comply with Laws*, May 10, 2013, available at [The use of armed drones must comply with laws - ICRC](#).

incidental harm or damage to civilians or civilian objects would be excessive in relation to the concrete and direct military advantage anticipated”¹²⁷.

In the present case, the automated drones system was incapable of fulfilling the principle of distinction and proportionality as required under IHL¹²⁸, and hence, qualifying as a weapon indiscriminate by nature.

[C.] WHETHER VICTOR YANAKOVICH CAN BE HELD ACCOUNTABLE FOR COMMITTING THE WAR CRIME OF MURDER?

Victor Yanakovich can be held criminally responsible for committing war crime of murder in the territory of Titan (C.I) through co-perpetration under Art. 25(3)(a) of the Rome Statute¹²⁹ which he (C.II) committed with intent and knowledge.

[C.1] VICTOR YANAKOVICH IS CRIMINALLY RESPONSIBLE UNDER ART. 25(3)(A) OF THE ROME STATUTE.

Art. 25(3) (a) covers the notions of direct perpetration¹³⁰, co-perpetration¹³¹ and indirect perpetration¹³². To establish the crime under Art. 25(3) (a) of the Statute, the prosecutor has to fulfill different tests to the doctrine of co-perpetration.¹³³

Co-perpetration is no longer included in the complicity concept, but rather is recognized as an autonomous form of perpetration¹³⁴. Every co-perpetrator fulfills a certain task which

¹²⁷ ICRC, *The Use of Armed Drones Must Comply with Laws*, May 10, 2013, available at [The use of armed drones must comply with laws - ICRC](#).

¹²⁸ Compromis, Witness Testimonials, Victim Witness-1, pp. 24-26.

¹²⁹ Rome Statute, Art. 25(3)(a).

¹³⁰ Lubanga, PTC, Decision on the confirmation of charges, ¶318.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Lubanga, Trial Chamber, ¶421.

¹³⁴ Conc. Vest, *GenoziddurchorganisatorischeMavchtaapparate*(2002) 185; van Sliedregt, *Criminal Responsibility* (2003) 71 *et seq.*

contributes to the commission of a crime and without which the commission would not be possible¹³⁵. The common plan or agreement forms the basis of a reciprocal or mutual attribution of the different contributions holding every co-perpetrator responsible for the whole crime¹³⁶. The common denominator of the various definitions found in the case law¹³⁷ is that such an attack “is one carried out pursuant to a preconceived policy or plan”¹³⁸

The commission of a crime jointly with another person involves five requirements¹³⁹. The material elements of co-perpetration are defined in Lubanga case by the Pre-Trial Chambers.¹⁴⁰

[C.I.i] There was existence of a common plan or agreement.

It is a settled position that the prosecution must establish the existence of a common plan or agreement between two or more persons, including the alleged perpetrator.¹⁴¹ Furthermore, the agreement need not be explicit, and that its existence can be inferred from the subsequent

¹³⁵ AMBOS KAI (ED.), ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, ARTICLE-BY-ARTICLE COMMENTARY (4th edn., Beck/Hart/Nomos, 2021) 3008 [“Ambos”].

¹³⁶ Stakić, Trial Chamber, ¶440; Eser, in: Cassese *et al.* (eds.), *The Rome Statute of the ICC* (2002) 767, 789 *et seq.*; Werle and Jessberger (2007) 5 JICJ.953, 958; *id.*, Principles (2014) 205 *et seq.*

¹³⁷ Tadić, ¶648; KAI AMBOS, TREATISE ON INTERNATIONAL CRIMINAL LAW, VOL. II: THE CRIMES AND SENTENCING, 60 (Oxford University Press 2014).

¹³⁸ Prosecutor v. Bagilishema, Case No. ICTR-95-1A-A, Appeal Judgement, ¶77 (Jul. 3, 2002); Prosecutor v. Vasiljevic, Case No. IT-98-32-T, Appeals Judgement, ¶35 (Nov. 29, 2002); Katanga, Decision on the confirmation of charges, ¶397 (Sep. 30, 2008); Prosecutor v. Al-Bashir, Case No. ICC-02/05-01/09 OA2, Judgment in the Jordan Referral re Al-Bashir Appeal, ¶81 (May. 6, 2019); Gbagbo, *supra* note 3, ¶225; K. AMBOS & S. WIRTH, THE CURRENT LAW OF CRIMES AGAINST HUMANITY, 1 Crim. L. Forum 13, 18 *et seq.*, 30 (2002); STEPHAN MESEKE, DER TATBESTAND DER VERBRECHEN GEGEN DIE MENSCHLICHKEIT NACH DEM RÖMISCHEN STATUT DES INTERNATIONALEN STRAFGERICHTSHOFES: EINE VÖLKERSTRAFRECHTLICHE ANALYSE 136 (Berliner Wissenschafts-Verlag 2005); ROBERT CRYER, PROSECUTING INTERNATIONAL CRIMES: SELECTIVITY AND THE INTERNATIONAL CRIMINAL LAW REGIME 254 (Cambridge University Press 2005); JULIAN FERNANDEZ, XAVIER PACREAU & LOLA MAZE, STATUT DE ROME DE LA COUR PÉNALE INTERNATIONALE: COMMENTAIRE ARTICLE PAR ARTICLE 417, 467 (A. Pedone 2012).

¹³⁹ Lubanga, Trial Chamber, ¶1018.

¹⁴⁰ *Id.*

¹⁴¹ Katanga, PTC I, Decision on the confirmation of charge, ¶522.

concerted action of the co-alleged perpetrators.¹⁴² A common plan has previously been evinced from meetings¹⁴³ and regular briefings to the perpetrators¹⁴⁴.

A meeting was held among Jack Rider, the accused and four other army officials¹⁴⁵ after getting information of a potential assembly being organized in Tango¹⁴⁶. In the meeting, a common plan was discussed and agreed upon by the majority including the accused himself, to conduct a strike covering the entire compound of Holy Cross School¹⁴⁷. After that, the accused and Mr. Jack Rider planned the entire operation¹⁴⁸ which was later implemented on the same doomed day of July 26, 2020¹⁴⁹ and caused the atrocities¹⁵⁰.

The Lubanga AC held that it is ‘sufficient for the common plan to involve “a critical element of criminality”¹⁵¹, i.e. ‘that it is virtually certain that the implementation of the common plan led to the commission of the crimes at issue’¹⁵². *In casu*, implementation of the agreed plan at 3 PM on July 26, 2020 led to the killings of 270 children and nearly 100 adults also injuring many others as per the report of October 01, 2020¹⁵³ which was done without giving any thought to it. This is obvious from the timing of the plan and its execution. The information about the said potential assembly was received at 10:15 am on July 26, 2020 and by 1 pm of the same day the accused, Jack Rider and 4 army officers were done discussing the plan and agreed upon the same within the inadequate time of less than 3 hours. The same plan was then started to be

¹⁴² Lubanga, PTC, ¶345.

¹⁴³ The Prosecutor v. Uhuru Muigai Kenyatta, ICC-01/09-02/11, Confirmation of Charges, ¶308 (January 23 2012) “**Kenyatta**”.

¹⁴⁴ Lubanga, Trial Chamber, ¶373.

¹⁴⁵ Compromis, ¶20.

¹⁴⁶ Compromis, ¶19.

¹⁴⁷ Compromis, ¶21.

¹⁴⁸ *Id.*

¹⁴⁹ Compromis, ¶22.

¹⁵⁰ *Id.*

¹⁵¹ Lubanga, Appeals Chamber, ¶446.

¹⁵² Lubanga, ¶451; The Prosecutor v. Laurent Gbagbo and Charles BléGoudé, ICC-02/11-02/11, PTC III, ¶140 (6 January 2012) “**Gbagbo, Goude**”.

¹⁵³ Compromis, ¶28.

executed within 20 minutes of informing commanders of the army of Titan¹⁵⁴. All these facts point out to the lack of thought and due diligence given to the planning of such an attack of high intensity.

[C.I.ii]Victor Yanakovich contributed in the commission of the crime

ICC has propounded that the alleged perpetrator must provide an essential contribution to the common plan that resulted in the commission of the crime.¹⁵⁵ But it does not define the word “essential” in this context.¹⁵⁶ However, given that the alleged perpetrator alone need not exercise control over the crime¹⁵⁷ “essential” cannot mean that the individual alleged perpetrator must have had the power to stop the crime or frustrate its commission¹⁵⁸ essentially negating Victor’s defense that he was not either incharge of the suspend command nor did he pull the trigger¹⁵⁹.

The principal perpetrator of a crime is that person who can ‘control or mastermind its commission’ by deciding where and how the crime would be committed, regardless of whether that person was the physical perpetrator of the crime¹⁶⁰. In cases of ‘joint commission’ of a crime, which the judges dubbed ‘co-perpetration’, the indicator of the accused’s ‘control’ over the collective crime was considered their ‘essential contribution’ to the joint criminal effort and their power ‘to frustrate the commission of the crime by not performing their tasks’¹⁶¹. Co-perpetration “is rooted in the notion of the division of essential tasks for the purpose of committing a crime by two or more persons acting in a concerted manner”¹⁶². As a result “although none of the participants has overall control over the offence because they all depend on one another for its commission, they all share control because each of them could frustrate the

¹⁵⁴ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

¹⁵⁵ Lubanga, Trial Chamber, ¶¶1006 &1018(ii).

¹⁵⁶ Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ICC, ICC-01/09-01/11, Pre-Trial Chamber-II, ¶11 (July 3, 2012).

¹⁵⁷ Lubanga, Trial Chamber, ¶994.

¹⁵⁸ Lubanga, Trial Chamber, ¶¶322, 341- 342 & 366.

¹⁵⁹ Compromis, Witness Testimonials, Defence Witness-1 at pp. 21.

¹⁶⁰ Lubanga, Confirmation of Charges Decision, ¶330.

¹⁶¹ Lubanga, Confirmation of Charges Decision, ¶¶346-347.

¹⁶² Lubanga, Trial Chamber, ¶342.

commission of the crime by not carrying out his or her task”¹⁶³. The ‘essential contribution’ requirement under Art. 25(3)(a) was differentiated from accessory liability under subparagraph (d), which merely required ‘any other’ type of contribution.¹⁶⁴

In casu the role and contribution of Victor Yanakovich was essential for the commission of the crime as he was the one who planned and programmed the drones and was the chief technician of project Hawk¹⁶⁵ which was launched in sync with military’s operation on the Holy Cross School¹⁶⁶. The entire operation could not be carried out without the lethal drones as they were the main weapons used for the attack¹⁶⁷.

In the case of *The Prosecutor v. Thomas Lubanga*, the Court held that the role of co-alleged perpetrator is to be assessed on a case-by-case basis.¹⁶⁸ This assessment involves a flexible approach, undertaken in the context of a broad inquiry into the overall circumstances of a case.¹⁶⁹ The contribution of the co-perpetrator can be made as determined by the Lubanga AC, not only at the execution stage of the crime, but also at ‘its planning stage or preparation stage, including when the common plan is conceived’¹⁷⁰. In *casu* Victor Yanakovich contributed to the plan both at the planning¹⁷¹ and execution stage¹⁷². As to the subjective side, the PTC generally states the obvious, i.e. the suspect must fulfill the subjective elements of the crime in question¹⁷³.

In the present case, Victor Yanakovich, chief technician of Project Hawk¹⁷⁴ was involved in planning the strike¹⁷⁵ and allowed the strike to happen despite having the knowledge that there

¹⁶³ Lubanga, Trial Chamber, ¶¶342&347.

¹⁶⁴ Lubanga, Trial Chamber, ¶999.

¹⁶⁵ Compromis, ¶10.

¹⁶⁶ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

¹⁶⁷ Compromis, ¶16.

¹⁶⁸ Lubanga, Trial Chamber, ¶1001.

¹⁶⁹ *Id.*

¹⁷⁰ Lubanga, Trial Chamber, ¶348; Gbagbo, Goude, ¶540

¹⁷¹ Compromis, ¶21.

¹⁷² Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

¹⁷³ Lubanga, PTC I, Decision on Confirmation of Charges, ¶349-60.

¹⁷⁴ Compromis, ¶ 8.

will be classes being organized in the premises of the said school during the hours of the planned operations¹⁷⁶. Victor also dismissed the suggestion of the area being a sensitive zone¹⁷⁷. Moreover, as per the testimony of Mr. Alex Chamberlain, Victor was given absolute control over the use of drones against the Targarians since he was the only individual who understood the anatomy of the algorithms that worked behind these drones¹⁷⁸.

It is also clear that it is not necessary to establish that the alleged perpetrator provided a contribution to the execution stage of the crime.¹⁷⁹ It is also not necessary to establish that the alleged perpetrator or any other co-alleged perpetrator physically committed any of the elements of the crimes,¹⁸⁰ as long as it is established that “the objective elements of an offense are carried out by a plurality of persons acting within the framework of a common plan”¹⁸¹ which has been established in the present case.

[C.1.iii]Victor Yanakovich was aware of the consequences arising due to the implementation of the common plan in the ordinary course of events.

The words "will occur", read together with the phrase "in the ordinary course of events", make clear that the required standard of occurrence of the consequence in question is near but not absolute certainty. The standard is therefore "virtual certainty", otherwise known as "oblique intention". The Chamber considers that the words used in Art. 30 are sufficiently clear for it to be able to rule in this connection. It therefore adopts the findings of Pre-Trial Chamber II in *Bemba*¹⁸² case¹⁸³.

Thus, this form of criminal intent presupposes that the person knows that his or her actions will necessarily bring about the consequence in question, barring an unforeseen or

¹⁷⁵ Compromis, ¶ 20.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

¹⁷⁹ Lubanga, Trial Chamber ¶526.

¹⁸⁰ Lubanga, Trial Chamber, ¶1003; Claus Roxin, p. 280; Tadić, Appeals Chamber, ¶196.

¹⁸¹ Lubanga, Trial Chamber, ¶¶495-497.

¹⁸² Bemba Gombo, PTC, ¶329.

¹⁸³ Katanga, Trial Chamber, ¶530.

unexpected intervention or event to prevent its occurrence. In other words, it is nigh on impossible for him or her to envisage that the consequence will not occur."¹⁸⁴

In casu, Victor being a specialist in the field of weaponization of artificial intelligence¹⁸⁵ was fully aware about the consequences of the strikes by lethal weapons. In the ‘ordinary course of events’ a drone attack on a populated school area is meant to cause chaos. Victor was also warned by two army officers about the physical classes being conducted in the Holy Cross School which he dismissed as irrelevant¹⁸⁶.

Victor, an expert in the field of weaponization¹⁸⁷, used lethal autonomous drones for the planned attack¹⁸⁸. He had also spent 1.5 years in the US to learn active warfare using drone technology¹⁸⁹ which clearly indicates that Victor was highly eligible and qualified to understand the consequences of using such highly lethal weapons. Victor had absolute control over the drones¹⁹⁰ which were used to the attack and he could have easily called off the attack within 7 seconds which was provided to suspend the ‘kill’ command¹⁹¹ as he had the training of making decisions that can adversely impact human life within 3-4 seconds of first sighting potential collateral damage¹⁹². Moreover, “in present time technology has not reached a stage where a drone can operate without any human control”¹⁹³. It would need assistance and inputs from the operator and the final authority lies on the operator which is Victor in the present matter.

¹⁸⁴ *Id.* at ¶ 546.

¹⁸⁵ Compromis, ¶8.

¹⁸⁶ Compromis, ¶20.

¹⁸⁷ Compromis, ¶8.

¹⁸⁸ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

¹⁸⁹ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

¹⁹⁰ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 15.

¹⁹¹ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 18.

¹⁹² Compromis, Witness Testimonials, Victim Witness-1 at pp. 24.

¹⁹³ Compromis, Witness Testimonials, Victim Witness-1 at pp. 26.

[C.I.iv]Victor Yanakovich was aware that he provided an essential contribution to the implementation of the common plan.

The suspects must all be mutually aware and mutually accept that implementing their common plan may result in the realization of the objective elements of the crime¹⁹⁴. They must be aware of the factual circumstances enabling him or her to jointly control the crime¹⁹⁵. *In casu* the entire planning was done by a group of people consisting of the accused, Jack Rider and four army officials¹⁹⁶ with the approval of Mr. Charlie Fox¹⁹⁷.

Victor was fully aware about the consequences of his actions and that of the planned attack. As already established, the consequence was fully anticipated and was within the ordinary course of events. Moreover being a specialist in drone technology¹⁹⁸ he was fully aware about the lethality of the drones.

This participation need not involve commission of a specific crime under one of those provisions (for example, murder, extermination, torture, rape, etc.), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose¹⁹⁹. In the Kvoc̑ka Appeals Chamber, position of authority was recognised relevant for establishing the awareness of the accused about the system and his participation in enforcing or perpetuating the common criminal purpose of the system²⁰⁰. The accused was well aware that his actions of programming²⁰¹ and using the lethal drones²⁰² in the highly sensitive area²⁰³ after breaching the

¹⁹⁴ Lubanga, Trial Chamber, ¶352.

¹⁹⁵ Lubanga, Pre-Trial Chamber, Decision on Confirmation of Charges, ¶366-7.

¹⁹⁶ Compromis, ¶20.

¹⁹⁷ Compromis, ¶¶16 & 18.

¹⁹⁸ Compromis, ¶8.

¹⁹⁹ Tadić, Appeals Chamber, ¶537.

²⁰⁰ Kvoc̑ka Appeal Judgement, ¶ 101, Krnojelac Appeal Judgement, ¶ 96.

²⁰¹ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

²⁰² Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 18.

²⁰³ Compromis, ¶20.

internal protocol²⁰⁴ would lead to atrocities. He was fully aware about the functioning of the drones²⁰⁵ and consequences of using the lethal weapons²⁰⁶.

[C.I.v] Victor Yanakovich was aware of the factual circumstances that established the existence of an armed conflict and the link between these circumstances and his conduct.

The *nullum crimen sine lege*²⁰⁷ principle does not require that an accused knew the specific legal definition of each element of a crime he committed²⁰⁸. It suffices that he was aware of the factual circumstances that is implicit in the terms “took place in the context of and was associated with”²⁰⁹, e.g., that armed forces were involved in the armed conflict²¹⁰. The criminal liability in question must be sufficiently foreseeable and the law providing for such liability “must be sufficiently accessible at the relevant time for it to warrant a criminal conviction and sentencing”²¹¹. Victor had full knowledge that the consequences of his acts and omissions would entail commission of war crime of murder which can be inferred from the position of authority and vast experience of drone technology he held. The principle of criminal liability further requires that as to foreseeability, the accused “must be able to appreciate that the conduct is criminal in the sense generally understood, without reference to any specific provision”²¹².

In the present case, the criminal liability of the accused is [a.] sufficiently foreseeable and [b.] sufficiently accessible at the time of commission of the crime.

[C.I.v.a.] Victor’s criminal liability was sufficiently foreseeable to him

²⁰⁴ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 18.

²⁰⁵ Compromis, ¶8.

²⁰⁶ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

²⁰⁷ Rome Statute, Art. 22.

²⁰⁸ Katanga, PTC, ¶297; Kordić and Čerkez, Appeals Chamber, ¶311.

²⁰⁹ Bemba Gombo, ¶146; *Id.*

²¹⁰ Kordic, Appeal Chamber, ¶311.

²¹¹ Milutinović, ¶37.

²¹² Hadzihasanovic et al., Decision on Command Responsibility, ¶34; Milutinović, ¶¶37-39.

The ICTY jurisprudence indicates that mere knowledge with respect to the conduct being criminal is satisfactory enough to amount to the accused's criminal liability to be sufficiently accessible to him²¹³. The accused has admitted that the consequences of the plan were "risky"²¹⁴.

Victor Yanakovich could sufficiently foresee the consequences of the attack on July 26, 2020, considering the planning and execution stages were performed on the same day²¹⁵. The lack of due diligence on part of Victor²¹⁶ represents the accused's negligence with respect to addressing the situation. The visuals received indicated the presence of children in the school²¹⁷ and considering that the accused himself ordered the overriding of the internal protocol²¹⁸, it was sufficiently foreseeable to Victor Yanakovich the criminal liability that would arise as a result of the attack on the Holy Cross School.

[C.I.v.b] Victor's criminal liability was sufficiently accessible to him

Victor's actions are not negatable of the *mens rea* element they possess by the absence of the knowledge of law²¹⁹. Art.32(2) "adopts, in principle, the old Roman rule *error juris nocet* or *ignorantia juris neminem excusat*- ignorance of law is no excuse"²²⁰. Further, it is essential for all members of a party to a conflict to be aware of the principles of IHL such as the principles of

²¹³ *Id.*

²¹⁴ Compromis, Annexure V- Transcript of Text Messages Exchanged Between the Accused and his Sister at pp.36.

²¹⁵ Compromis, ¶20; Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

²¹⁶ *Id.*; Compromis, Witness Testimonials, Prosecutor Witness- 2, pp.18.

²¹⁷ Compromis, Witness Testimonials, Prosecutor Witness- 2, pp.18.

²¹⁸ *Id.*

²¹⁹ Rome Statute, Art. 32(2).

²²⁰ Stefanie Bock, *The Prerequisite of Personal Guilt and the Duty to Know the Law in the Light of Article 32 ICC Statute*, Utrecht Law Review; A. CASSESE, INTERNATIONAL CRIMINAL LAW, 2008, p. 294; T. Weigend, 'Zur Frage eines "internationalen" Allgemeinen Teils', in B. Schünemann et al. (eds.), Festschrift für Claus Roxin, 2001, p. 1392; A. VAN VERSEVELD, MISTAKE OF LAW – EXCUSING PERPETRATORS OF INTERNATIONAL CRIMES, 2012, p. 83; K. AMBOS, TREATISE ON INTERNATIONAL CRIMINAL LAW, VOLUME I: FOUNDATIONS AND GENERAL PART, 2013, p. 370; cf. also E. VAN SLIEDREGT, INDIVIDUAL CRIMINAL RESPONSIBILITY IN INTERNATIONAL LAW, 2012, p. 285; for a different view cf. Y. Dinstein, 'Defences', in G.K. McDONALD & O. SWAAK-GOLDMAN (eds.), SUBSTANTIVE AND PROCEDURAL ASPECTS OF INTERNATIONAL CRIMINAL LAW – THE EXPERIENCE OF INTERNATIONAL AND NATIONAL COURTS, Vol. I., Commentary, 2000, p. 377.

protection of civilians, distinction and proportionality and comply without fail with the same²²¹. Hence, it was sufficiently accessible to Victor Yanakovich the criminal liability resulting from his actions and contributions in the attack on the Holy Cross School.

[C.2]VICTOR YANAKOVICH HAD INTENT AND KNOWLEDGE OF THE CRIME COMMITTED UNDER ART. 30 OF THE ROME STATUTE

In order to intend a conduct, a person must ‘mean’ to engage in conduct; it is not sufficient if the conduct was brought about inadvertently. To know if a circumstance means to have ‘awareness’ that it exists; mere suspicion is not sufficient unless it amounts to some amount of wilful blindness or some other high degree of awareness or advertence to the existence of the circumstance²²². In present times, *actus non facit reum nisi mens sit rea*²²³ is a basic requirement common to contemporary legal systems²²⁴ which is basically a requirement of some element of moral blameworthiness - a guilty mind²²⁵. Intent and knowledge are adopted conjunctively in the Rome Statute because one cannot perform an action or cause a consequence intentionally one also has knowledge of the circumstances in which that action or consequence was committed²²⁶. *In casu* Victor satisfied both the elements of intent and knowledge.

²²¹ Nicaragua case (Merits), ¶220; ICJ, Application of the Genocide Convention case (Provisional Measures), Order, April 8, 1993, ¶52(A)(2); UN Security Council, Res. 788, November 19, 1992, ¶5; UN Security Council, Res. 1071, August 30, 1996, ¶10; UN General Assembly, Res. 2674 (XXV), December 9, 1970, ¶3; UN General Assembly, Res. 3102 (XXVIII), December 12 1973, ¶4; UN General Assembly, Res. 3319 (XXIX), December 14 1974, ¶3; International Conference for the Protection of War Victims, Geneva, August 30- September 1 1993, Final Declarations, ¶¶I(6) and II;

²²² Ambos, pp. 832.

²²³ Translation: ‘An act does not make a person guilty of a crime, unless the person’s mind be also guilty’.

²²⁴ AMBOS, K., TREATISE ON INTERNATIONAL CRIMINAL LAW (OUP 2014) 93-95.

²²⁵ Ambos, pp. 910.

²²⁶ *Id.*

[C.2.i] Victor committed the crime with intent

Existence of intent and knowledge can be inferred from relevant facts and circumstances²²⁷. Intent has been specifically defined in paragraph 2 of Art. 30²²⁸. A person shall be criminally responsible and liable for punishment for a crime within the *ratione materiae* of the ICC “only if the material elements are committed with intent and knowledge”. The second paragraph identifies the exact meaning of intent, whereas the third paragraph defines the meaning of knowledge²²⁹. An accused person has ‘intent’ in two situations. Where the crime requires ‘conduct’, the person must ‘mean to engage in that conduct’. This is a relatively straightforward idea in criminal law, excluding unintentional conduct such as automatic or reflex behavior, and ‘accidents’. With respect to a crime of conduct, the accused is deemed to intend the conduct.

As a general rule, the Prosecutor need not actually prove that person intended the conduct, as this follows logically from proof of the conduct itself. The defense may argue that the conduct was not in fact intentional. Classic examples of this include the defenses of mental incapacity and intoxication as well as mistake²³⁰ which are not present or proved in the present case. Victor’s intent of engaging in the conduct can be clearly determined from the fact that he planned the entire attack in his meeting with Jack Rider and the four army officials²³¹

The Prosecution contends that the accused meant to engage in the conduct which can be construed from a number of factors but most importantly his financial gains from the act. Victor Yanakovich took advantage of the armed conflict, worked in close association with the OFC²³² and ruined the lives of the Targarian community²³³ for his personal gains in order to increase his

²²⁷Elements of Crimes, General Introduction, ¶3; Bemba Gombo, ¶137.

²²⁸ Rome Statute, Art. 30(2).

²²⁹ *Id.*

²³⁰ Rome Statute, Art. 32.

²³¹ Compromis, ¶20.

²³² Compromis, ¶¶20 & 9.

²³³ Compromis, ¶28.

market capitalization all over the world²³⁴. The non-international armed conflict against the Targarians “allowed 3MZ, and Victor Yanakovich, to gain direct financial benefits”²³⁵, which were “exchanged on the promise that 3MZ will continue to provide high-quality spare parts used to make and assemble the drones used in Project Hawk”²³⁶. The Truth Commission in its Ground Report was of the view that the accused “was motivated to continue the supply of such weapons for his personal and professional gains”²³⁷.

[C.2.ii.] Victor committed the crime with knowledge.

Existence of intent and knowledge can be inferred from relevant facts and circumstances²³⁸. Adopting terminology from continental legal doctrine, judges of the International Criminal Court have described these volitional and cognitive components as *dolus*. There are said to be three relevant forms of *dolus*: *dolus* in the first degree or direct intent; *dolus directus* in the second degree or oblique intention; and *dolus eventualis* or subjective or advertent recklessness.

In casu, Victor through his act brought out the mental element of *dolus directus* in the crime committed. In *dolus directus* of the second degree, the cognitive element is more important. The offender need not have the actual intent or will to bring about the material elements of the crime, but must be aware that those elements will be the almost inevitable outcome of his or her acts or omissions²³⁹. In other words, the offender must be ‘aware that the consequence will occur in the ordinary course of events’²⁴⁰. In this context, the ‘violation element decreases substantially and is overridden by the cognitive element i.e. the awareness that his or her acts or omissions “will” cause the undesired proscribed consequence’²⁴¹. The general

²³⁴ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 19; Defence Witness-1 at pp. 21; Prosecutor Witness-1 at pp. 16.

²³⁵ Compromis, Annex-II- Ground Report | Truth Commission of Titan, pp. 31.

²³⁶ *Id.*

²³⁷ Compromis, Annex-II- Ground Report | Truth Commission of Titan, pp. 32.

²³⁸ Elements of Crimes, General Introduction, ¶3; Bemba Gombo, Pre-Trial Chamber II, ¶137.

²³⁹ Bemba Gombo, ¶358

²⁴⁰ Lubanga, Trial Chamber ¶351; Katanga, Trial Chamber, ¶530.

²⁴¹ Bemba Gombo, ¶359.

norm consisting of knowledge as a component of the mental element must be read with an eye to Art. 32 of the Statute, which governs the defense of mistake which is absent in the present matter.

Victor being a specialist in the field of weaponization of artificial intelligence²⁴² was fully aware about the consequences of the drone strikes. The drone attack on a populated school area is meant to cause chaos. Victor was also warned by two army officers about the physical classes being conducted in the Holy Cross School which he dismissed as irrelevant²⁴³.

Victor, an expert in the field of weaponization²⁴⁴, used lethal autonomous drones for the planned attack²⁴⁵ by breaching the internal protocol²⁴⁶. He had also spent 1.5 years in the US to learn active warfare using drone technology²⁴⁷ which clearly indicates that Victor was highly eligible and qualified to understand the consequences of using such highly lethal weapons. Victor had absolute control over the drones²⁴⁸ which were used to the attack and he could have easily called off the attack within 7 seconds which was provided to suspend the ‘kill’ command²⁴⁹ as he had the training of making decisions that can adversely impact human life within 3-4 seconds of first sighting potential collateral damage²⁵⁰. Moreover, “in present time technology has not reached a stage where a drone can operate without any human control”²⁵¹. It would need assistance and inputs from the operator and the final authority lies on the operator which is Victor in the present matter.

²⁴² Compromis, ¶8.

²⁴³ Compromis, ¶20.

²⁴⁴ *supra* note, 242.

²⁴⁵ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

²⁴⁶ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 18.

²⁴⁷ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

²⁴⁸ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 15.

²⁴⁹ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 18.

²⁵⁰ Compromis, Witness Testimonials, Victim Witness-1 at pp. 24.

²⁵¹ Compromis, Witness Testimonials, Victim Witness-1 at pp. 26.

PRAYER

Wherefore, in the light of the issues raised, arguments on merits, evidences supplied and authorities relied on, it is humbly prayed that:

- I. The armed conflict threshold is met and Victor Yanakovich's conduct took place in relation to such conflict.
- II. The allegations against Victor Yanakovich meet the *mens rea* and *actus reus* requirements for co-perpetration under Article 25(3)(c) of the Statute.
- III. The evidence furnished to prove that Victor Yanakovich committed the crimes charged is sufficient.

All of which is respectfully submitted,

On Behalf of the Prosecution

OFFICE OF THE PROSECUTOR

**SEVENTH SYMBIOSIS LAW SCHOOL, PUNE- INTERNATIONAL CRIMINAL TRIAL
ADVOCACY COMPETITION, 2022**

BEFORE

TRIAL CHAMBER, INTERNATIONAL CRIMINAL COURT

THE HAGUE, THE NETHERLANDS

THE PROSECUTOR

PROSECUTION

V.

VICTOR YANAKOVICH

DEFENSE

DEFENDANT CHARGED WITH

WAR CRIMES OF MURDER *under Article 8 (2)(c) of the Rome Statute*

WRITTEN SUBMISSIONS ON BEHALF OF THE VICTIM

WORD COUNT: 7320



Original: **English**

No: **ICC-03/27-08/17**

Date: **[12/04/2022]**

TRIAL CHAMBER I

Before: Judge _____, the Presiding Judge
Judge _____, and
Judge _____,

SITUATION IN THE REPUBLIC OF TITAN

IN THE CASE OF

THE PROSECUTOR V. VICTOR YANAKOVICH

PUBLIC

**DECISION PURSUANT TO ARTICLE 61(7)(A) AND (B) OF THE ROME
STATUTE ON THE CHARGES OF THE PROSECUTOR AGAINST VICTOR
YANAKOVICH**

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LIST OF ABBREVIATIONS

ABBREVIATION	EXPANSIONS
¶	- Paragraph
AJ	- Appeals Judgement
AW	- Arrest Warrant
Art.	- Article
IHL	- International Humanitarian Law
ed.	- edition
ECJ	- European Court of Justice
EOC	- Elements of Crimes
Id	- Ibid
i.e.	- Id est
ICCPR	- International Covenant on Civil and Political Rights
ICC	- International Criminal Court
Rome Statute	- International Criminal Court Statute
ICTR	- International Criminal Tribunal for Rwanda
ICTY	- International Criminal Tribunal for the Former Yugoslavia
Mr.	- Mister
NGO	- Non-Governmental Organisation
NIAC	- Non International Armed Conflict

OTP	-	Office of the Prosecutor
pp.	-	Page
PTC	-	Pre-Trial Chamber
Res.	-	Resolution
TJ	-	Trial Judgement
UN	-	United Nations
UNCLOS	-	United Nations Convention on the Law Of the Sea
UNCRC	-	United Nations Convention on Child Rights
UNHCHR	-	United Nations High Commissioner for Human Rights
v.	-	Versus

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STATEMENT OF FACTS

1. The Sovereign Republic of Titan (“**Titan**”) is a country divided into provinces with each province exercising a degree of self-governance from the historical perspective. Titan is a permanent member of the United Nations Security Council, a member of the World Trade Organisation and known for its civil rights model. The population of Titan comprises three major communities: the Targarians, represented by the Targarian Liberation Force (“**TLF**”), the Orionions, represented by the Orionion Federal Communion (“**OFC**”) and the Mora. The larger portion of the population consists of the Targarians and Orionions.
2. Titan shares its border with Galador, a country which invests three percent (3%) of its GDP in its defence and infrastructure, and shares hostile relations with Titan. Galador and Titan are parties to the Rome Statute and the Geneva Conventions (including the additional protocols thereto).
3. The federal government of Titan has been controlled by the TLF since 1975. After the 2013 elections, OFC occupied the federal seat, headed by Mr. Charlie Fox as the President of Titan. The TLF denounced the 2013 elections and underwent an internal restructuring, with calls to create a system of local self-governance in Tango. The senior-most members called “elders” initiated a recruitment drive for the formation of a TLF militia in attempts to disrupt governance in Titan through the use of aggressive protest methods. The local press statistics recorded a total of 140 attacks carried out in different cities of Titan linked directly or indirectly to TLF during the period of August 2013 to February 2019.
4. Mr. Victor Yanakovich (*hereinafter*, the Accused) served as the Chief Technician for Project Hawk from April 2015 to November 2020, responsible for both- administrative control as well the technical development of Project Hawk. From 2010 to 2015, Victor served at the Ministry of Defense of Titan as an External Consultant, an expert in the field of weaponization of artificial intelligence and later on, as an expert in the conceptualization of autonomous drones for Titan. Prior to 2010, the accused served on the board of multiple weapon manufacturers based in Russia, France and Australia.

5. Since then, the accused is believed to have built close ties with the Orionion commanders of the Titanian military and alleged to have transferred illegitimate financial kickbacks to these commanders through unverified related party transactions, related to him, directly or indirectly. This has allowed Victor to gain access to the top brass of the OFC and its leader.
6. Victor is also the former director of 3MZ Inc. (“**3MZ**”), with a reputation in the area of advanced weaponization, and known to be under scrutiny in the neighbouring states for fuelling unrest by supplying rebel forces of Galador with advanced military-grade weapons.
7. Titan witnessed multiple protests in the first term of the OFC government in light of several alleged allegations of discrimination and arbitrary exercise of power against the Targarian community. On December 14, 2019, the President of Titan, Charlie Fox, ordered a full-frontal assault to crush all resistance arising in the Tango region. Titan started a policy of mass arrests as well against any groups or associations formed with links to the Targarians.
8. In May 2020, reports claimed the use of drones by Charlie Fox to suppress the rebellion in Tango. This was later confirmed by investigation, that by June 2020, the firepower of the highest grade and drones developed under Project Hawk were engaged in an indiscriminate counter-offensive against the identified leaders of TLF. Reports suggested a sharp spike in violence during the period of May 2020 to July 2020 between the two communities leading to several casualties, claimed to be committed by Charlie Fox, the President and Jack Rider, the Military Commander, along with the accused in this case.
9. On July 26, 2020, information received by Jack Rider referred to a potential assembly organizing in Tango by the elders to run a sizeable participation drive for TLF’s militia. It also indicated towards attempts made by TLF to instigate Targarian soldiers of Titan’s army to rebel against it and become defectors fighting for the cause of the Targarians. In response, the accused and Jack Rider, along with 4 additional army officers, examined the population distribution and topography of the Holy Cross School and its adjoining areas. The school was located in the moderately dense population of Targarians, local

tribals and few Orionion families. The documents submitted by the ICC Prosecutor as a part of the preliminary investigation indicate that two army officers participating in the meeting emphasised upon the identified site to be a sensitive zone, with vulnerable groups, such as children.

10. The meeting by majority of 4:2 voted to conduct a strike covering the entire compound of the Holy Cross School, taking on record the objections raised by the minority two officers highlighting that such an operation may be found to be “*excessive, abusive and against established norms of the army*”. The accused and Jack Rider, thereafter, planned the entire operation to target the members of TLF’s militia. Around 3 p.m. on July 26th, 2020, extremely graphic visuals of the massacre caused on the grounds of the School were circulated on the internet concerning the mass killings.
11. Taking note of the incident, the ICC Prosecutor decided to conduct a preliminary investigation into the situation with special emphasis on the roles played by Charlie Fox, Jack Rider and Victor Yanakovich based on a reference received from Galador. In parallel, on October 13th, 2020, the United Nations established a Truth Commission for Titan to intervene in the situation and pacify the warring factions in the country. In November 2020, a ceasefire and truce were announced between TLF and OFC, with both parties committing to work towards a peaceful resolution of all differences. Charlie Fox was asked to resign and a transitional government was established, composed of representatives from both the Targarians and the Orionions.

PROCEDURAL HISTORY AND PRELIMINARY MATTER

12. *August 24, 2020*: Galador referred to the ICC Prosecutor the situation with respect to the conflict in Titan, including the attacks held on July 26, 2020, on the Holy Cross School in Titan (“Situation”).
13. *October 01, 2020*: The Office of the Prosecutor released a preliminary report with respect to the Situation in Titan to be, in its opinion, inadequate to qualify the legal standards governing the jurisdiction of the Court with reference to *Article 17(1)(d) of the Statute*.

14. *October 7, 2020:* Galador filed an application under *Article 53(3)(a) of the Statute*, before the Chamber, to review the decision made by the Office of the Prosecutor with respect to the incident that occurred on July 26th, 2020.

15. *February 03, 2021:* the ICC Chamber acceded to the request made by Galador, requesting the Prosecutor to reconsider its decision not to investigate the attack on civilians and children on July 26, 2020, on the principle that the death of 270 children and 100 adults does not reach the scale of atrocities required to trigger the jurisdiction of the Court. Additionally requested that any contradictory information on the issue of whether a set of act(s) amount to a crime under the jurisdiction of the ICC. Considering the aforementioned findings, this Chamber concluded that the decision of the Prosecutor to not investigate the attack was held to be invalid and, the Office of the Prosecutor, thereafter, directed to reconsider its decision.

16. *January 05, 2022:* The Pre-Trial Chamber confirmed the charges of ‘War Crime of Murder’ towards the accused and committed the accused to the Trial Chamber for Trial.

ISSUES PRESENTED

A.

WHETHER VICTIMS OF WAR CRIME OF MURDER ARE ENTITLED TO CERTAIN RIGHTS UNDER INTERNATIONAL LAW?

B.

WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF WAR CRIME OF MURDER COVERED UNDER ART. 8 OF ROME STATUTE IN COUNTRY TITAN?

C.

WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW UNDER GENEVA CONVENTIONS AND ITS ADDITIONAL PROTOCOLS?

D.

WHETHER VICTOR YANAKOVICH CAN BE HELD ACCOUNTABLE FOR COMMITTING THE WAR CRIME OF MURDER?

SUMMARY OF ARGUMENTS

[A.] WHETHER VICTIMS OF WAR CRIME OF MURDER ARE ENTITLED TO CERTAIN RIGHTS UNDER INTERNATIONAL LAW?

The VLR submits that the Victims in the present case shall be properly remedied for the damage caused by the crime. Firstly, the victims qualify the standard for receiving restitution, compensation, and rehabilitation [1.] Secondly, the order of reparations shall be made directly against the convict, or the Trust Fund maintained by the court shall be used for the above-mentioned purpose [2.]

[B.] VICTOR YANAKOVICH CAN BE PROSECUTED FOR THE COMMISSION OF WAR CRIME OF MURDER UNDER ART. 8 OF THE ROME STATUTE

1. The Contextual Elements of Art. 8(2)(c) have been satisfied in the present case as [a.] there was an existence of an armed conflict not of an international character, [b.] the war crime of murder was in context of and associated with NIAC, and [c.] Victor Yanakovich was aware of the factual circumstances that established the existence of an armed conflict.
2. The Specific Elements of Art. 8(2)(c) have been satisfied in the present case as [a.] he killed one or more persons, [b.] such persons were civilians, and [c.] Victor Yanakovich was aware of the factual circumstances that established this status.

[C.] VICTOR YANAKOVICH CAN BE PROSECUTED FOR THE COMMISSION OF GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW UNDER GENEVA CONVENTIONS AND ITS ADDITIONAL PROTOCOLS

Victor Yanakovich's conduct and actions led to grave breaches of International Humanitarian Law and the violation of its fundamental principles- [1.] the principle of 'protection of non-combatants', [2.] the principle of 'distinction', [3.] the principle of 'proportionality'.

[D.] VICTOR YANAKOVICH CAN BE HELD ACCOUNTABLE FOR COMMITTING THE WAR CRIME OF MURDER

Victor Yanakovich is criminally responsible for committing War Crime of Murder in country Titan:

1. Through co-perpetration committed under Art. 25(3)(a) of the Rome Statute- *[i.]* there was an existence of a common plan or agreement, *[ii.]* Victor Yanakovich contributed in the commission of the crime, *[iii.]* Victor Yanakovich was aware of the consequences arising in the ordinary course of events due to the implementation of the common plan, *[iv.]* Victor Yanakovich was aware of his essential contribution to the implementation of the common plan, *[v.]* Victor Yanakovich was aware of the factual circumstances that established the existence of an armed conflict and the link between these circumstances and his conduct.
2. Victor had intent and knowledge of the crime committed under Art. 30 of the Rome Statute- *[i.]* Victor committed the crime with intent, *[ii.]* Victor committed the crime with knowledge.

ARGUMENTS IN DETAIL

A. VICTIMS OF WAR CRIME OF MURDER ARE ENTITLED TO CERTAIN RIGHTS UNDER INTERNATIONAL LAW.

The preamble to the Rome Statute of the International Criminal Court (ICC) has intentional emphasis on victims and human sufferings, that "during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity."¹

Victims of war crime of murder are (1) entitled to participate in the trial and (2) they must be appropriately remedied.

[A.1] VICTIMS ARE ENTITLED TO PARTICIPATE IN THE TRIAL

The ICC has stated that the participation rights will be available using two criteria – namely (a) satisfying the definition of ‘victim’, and having (b) a ‘personal interest’ in participating in the proceedings.²

[A.1.1] Truth Commission satisfies the definition of “victim”.

The Victims Declaration defines ‘Victims’ as: “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States”³.

Rule 85 defines Victims as “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.”⁴

¹ Rome Statute of the International Criminal Court preamble., July 17, 1998, 2187 U.N.T.S. 90, [“**Rome Statute**”].

² Rome Statute, Art. 68.

³ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, Annex, U.N. Doc. A/RES/ 40/34/Annex (Nov. 29, 1985).

⁴ International Criminal Court, Rules of Procedure and Evidence, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 85, [“**Rules of Procedure and Evidence**”].

The definition of victims in Rule 85⁵ is largely based on existing victim definitions in international law, mainly those contained in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁶ and in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.⁷

In order to establish the criteria for determining whether applicants meet the definition of victim set out in Rule 85(a)⁸ in relation to natural persons, a four-part test was established by Pre-Trial Chamber I in the Situation in the Democratic Republic of Congo,⁹ and has been subsequently followed by other Chambers and confirmed on appeal.¹⁰

The constituent parts of the test are: (i) whether the identity of a natural person or legal person can be established; (ii) whether the applicants claim to have suffered harm; (iii) whether a crime within the jurisdiction of the Court can be established; and (iv) whether harm was caused “as a result” of the event constituting the crime within the jurisdiction of the Court.

[A.1.1.a] Whether the identity of a natural person or legal person can be established

⁵ *Id.*

⁶ *supra* note 3.

⁷ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly, March 21, 2006, A/RES/60/147 (hereinafter “**The Basic Principles**”).

⁸ *supra* note 4.

⁹ The Situation in the Democratic Republic of Congo, Decision on the application for participation in the proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS, ICC-01/04-101-tEN-Corr, at ¶9 (January 17, 2006). <http://www.icccpi.int/iccdocs/doc/doc183441.PDF>.

¹⁰ ICC, Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision on the Applications for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6 in the Case of Thomas Lubanga Dyilo, pp. 6-8 (July 18, 2006) [“**Lubanga**”].

On October 13, 2020, Truth commission was established by the United Nations to intercede in the crisis and bring peace to the titans' feuding groups.¹¹

The Truth Commission of Titan (**'Truth Commission'**) filed an application to seek leave of the chamber to participate in the proceedings against the accused in the capacity of the Legal Representative of the Victims¹². The Chamber admitted the applicant as the Legal Representative of the Victims¹³. Hence, the identification of the victim has been confirmed by the Pre-Trial chamber.

[A.1.1.b] Whether the applicants claim to have suffered harm.

The notion of "harm" is not defined in the Statute or Rules of Procedure and Evidence, and has not been defined as such in jurisprudence relating to victims' participation. The Appeals Chamber has indicated that the word "harm" denotes hurt, injury, loss or damage.¹⁴

A victim may suffer harm both individually and collectively and such harm may be physical or mental or emotional suffering, economic loss or substantial impairment of his/her fundamental rights through certain acts or omissions of the perpetrator.¹⁵

All conviction for causing serious bodily or mental harm¹⁶ involves killings¹⁷. The loss of family members (death of 270 children and close to 100 adults)¹⁸ was deemed to

¹¹ 7th Symbiosis Law School, Pune- International Criminal Trial Advocacy Competition, 2022, "**Compromis**", ¶24.

¹² Compromis, ¶35.

¹³ Compromis, ¶37.

¹⁴ Lubanga, Appeals Chamber, ¶31.

¹⁵ The Basic Principles; Lubanga, Decision on Victims' Participation, ¶35.

¹⁶ Prosecutor v. MomciloKrajsnik, Case No.IT-00-39-T, Trial Chamber, ¶738, (Int'l Crim. Trib. for the Former Yugoslavia Sep 27, 2006), [**Krajsnik**].

¹⁷ Prosecutor v. AthanaseSeromba, Appeal Chamber, ICTR-2001-66-A, ¶46 [**"Seromba"**]; Krajsnik, Trial Chamber, ¶¶862-863, (March 12, 2008); International Criminal Court, Elements of Crimes (2011), Art. 6(b), n.3 Elements of Crime, ICC, 18 UN Doc. PCNICC/2000/1/Add.2 (2000) [**"EOC"**].

¹⁸ Compromis, ¶28.

cause serious and long term emotional and mental suffering.¹⁹ Physical injuries and psychological trauma as a result of exposure to random shooting, severe burns and witnessing events of an exceedingly violent and shocking nature, was considered to cause physical and emotional harm.²⁰

[A.I.1.c] Whether a crime within the jurisdiction of the Court can be established

Jurisdiction under Art.19 of the Rome Statute denotes competence to deal with a criminal cause or matter under the Statute.²¹

When the court is making a determination as to whether it has jurisdiction over the case, the crime must satisfy one of the criteria laid down under Art. 12 of the Rome Statute, namely, it must either have been committed on the territory of a State Party or by national of that State or have been committed on the territory of a State which has made a declaration under Art.12 (3) of the Rome Statute or by nationals of that State.²²

In casu, The Sovereign Republic of Titan ('Titan') is the state party to the Rome Statute²³ and the accused is a national of Titan.²⁴ All the actions of Victor Yanakovich occurred in Titan²⁵ and the war crime of murder committed by accused falls under Art.5 of Rome Statute.²⁶

¹⁹ Lubanga, Trial Chamber, ¶172; Selmouni v. France, ECtHR Judgement, appl. no. 25803/94, ¶160["**Selmouni**"], (July 28, 1999).

²⁰ Lubanga, Trial Chamber, Decision on Victims' Participation, ¶¶87–94; Lubanga, Pre-Trial Chamber I, ¶79; Lubanga, Pre-Trial Chamber II, Decision on Victims' Applications for Participation.

²¹ Lubanga, Trial Chamber, Jurisdiction, ¶24.

²² The Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Pre-Trial Chamber II, ¶12 (June 15, 2009) ["**Bemba Gombo**"]; The Prosecutor v. Laurent Gbagbo and Charles BléGoudé, ICC-02/11-02/11, Pre-Trial Chamber III, ¶¶8&9 (January 6, 2012). ["**Gbagbo, Goudé**"].

²³ Compromis, ¶5.

²⁴ Compromis, part II (The Accused).

²⁵ Compromis, part III (Situation).

²⁶ Rome Statute, Art. 5.

[A.1.1.d] Whether harm was caused “as a result” of the event constituting the crime within the jurisdiction of the Court.

It must be established to prove the causal link between crime and harm that the crime committed by the perpetrator is the actual (‘but/for’) and ‘proximate’ cause of the harm.²⁷ The Chamber is not limited to admissible evidence for this purpose, nor does it need to limit itself to the kinds of harm identified in the Judgment.²⁸

‘Proximate cause’ is a cause that is legally sufficient to result in liability,²⁹ and in assessing proximate cause the Chamber will consider, inter alia, whether it was reasonably foreseeable that the acts and conduct underlying the conviction would cause the resulting harm.

Truth commission submits that the harm to the victims is clearly a result of Victor Yanakovich’s actions/omissions³⁰. Investigation revealed that the accused exercised enormous control over the active use of advance weapons³¹ which fired shots at succession at civilians which included school children and adults³².

CIHL and common Art. 3 of the Geneva Conventions provides that “the wounded and sick shall be collected and cared for”³³. However, in the present matter, wounded were

²⁷ Lubanga, Reparations Order, ¶¶11 & 59; The Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15, Reparations Order, ¶42 (Aug. 17, 2017) [“**Ahmad Al Faqi**”]; Lubanga, ¶6 .

²⁸ Lubanga, Appeals Chamber, ¶185.

²⁹ ‘Proximate Cause’ under ‘Cause’, GARNER, B. A., & BLACK, H. C. (1999). *Black’s law dictionary* (10th ed. 2014).

³⁰ Compromis, Witness Testimonials, Victim Witness-1 & Victim Witness-2 at pp. 24&27.

³¹ Compromis, Annex II-Ground Report | Truth Commission of Titan at pp. 31.

³² Compromis, Witness Testimonials, Victim Witness-2 at pp. 27.

³³ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31, common Article 3, pp 192 [“**Geneva Convention III**”]; International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non- International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 3, Articles 7-8. [“**Additional Protocol-II**”].

refused any sort of treatment.³⁴ The PTC IV also acknowledged that the death of 270 children and 100 adults was the direct consequence of the “Situation”³⁵.

[A.1.2] Victim has a “personal interest” in participating in the proceedings.

Victims are placed at the “heart of International Criminal Law” in the Rome Statute.³⁶ The causal link between harm and crime has already been established. The sufferings are the result of the crime which shows the “personal interest” of victims to participate in the proceedings.

The consideration of the victim's interest should be taken care of, in both procedural and substantive justice for victims. Procedural justice requires fairness of treatment in proceedings, impact on decisions and ability to shape outcomes.³⁷ Whereas, Substantive justice gives rise to truth, justice and reparation.³⁸

[A.2] VICTIMS OF WAR CRIME OF MURDER MUST BE APPROPRIATELY REMEDIED.

Compensation requires a broad application, to encompass all forms of damage, loss and injury³⁹. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case

³⁴ Compromis, Witness Testimonials, Victim Witness 2 at pp. 27.

³⁵ Compromis, ¶28.

³⁶ Paolina Massidda and Sarah Pellet, Role and practice of the Office of Public Counsel for Victims, in C. Stahn and G. Sluiter (eds.), *The Emerging Practice of the International Criminal Court*, (Brill 2009) 691-706, p692.

³⁷ Luke Moffett, *Justice for Victims before the International Criminal Court*, (Routledge 2014).

³⁸ Article 8 Universal Declaration of Human Rights (UDHR), 217 A (III), December 10, 1948; Article 13 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), CETS No.5; and Article 2(3) International Convention of Civil and Political Rights, UN Treaty Series Vol.999, p171, December 16, 1966. *Velásquez Rodríguez v Honduras*, Inter-American Court of Human Rights (IACrHR), Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), [“**Velásquez Rodríguez**”], (July 9, 1988).

³⁹ The Basic Principles, principle 20; ECCC Internal Rules, rule 23 bis (l)(b); *Plan de Sánchez Massacre v. Guatemala*, Judgment, Inter-American Court of Human Rights, April 29, 2004, IACHR Series C No 105, ¶226.

resulting from gross violations of international human rights law and serious violations of international humanitarian law.⁴⁰

[A.2.1] The ICC Must Establish Principles Relating to Reparations to, or in Respect of, Victims, Including Restitution, Compensation and Rehabilitation.

The Truth Commission submits that the victims in the present case are entitled to reparations as provided under Art.75 of the Statute⁴¹. It is submitted that the victims were subject to War Crime of Murder⁴² and have suffered great harm on account of the same. The victims fulfill the threshold for receiving reparations from the Accused as well as restitution, compensation, and rehabilitation from the Trust Fund maintained by the Court.⁴³

This Court has the authority to decide the nature and degree of any harm, loss, or injury to, or in respect of victims, either on request or on its own accord.⁴⁴

[A.2.2] The Court May Order Directly Against the Convicted Person.

The ICC has jurisdiction over individual criminals⁴⁵. The Court has the authority to issue an order against a convicted person that specifies appropriate remedies to or in respect of victims, including restitution, compensation, and rehabilitation.⁴⁶

Truth Commission submits that Victor Yanakovich must make fair restitution to these victims, their families and dependants as he was significantly responsible for the harm caused⁴⁷. The General Assembly emphasised that victims are entitled to get paid for the harm

⁴⁰ The Basic Principles, ¶20.

⁴¹ Rome Statute, Art. 75.

⁴² Written Submission on Behalf of the Victims - Contention II.

⁴³ Rule 98, the Rules of Procedure and Evidence.

⁴⁴ Rome Statute, Art. 75.

⁴⁵ Rome Statute, Art. 25.

⁴⁶ Rome Statute, Art. 75.

⁴⁷ Lubanga, Trial Chamber, Reparations Decision, ¶269.

or loss suffered, and receive reimbursement of expenses incurred as a result of the victimization.⁴⁸

[A.2.3] The Trust Fund Maintained by the Court Should Alternatively be used for Remediating the Victims.

Once the ICC is found to be the proper jurisdiction for international crimes (which it is, in the present case), the Court may order money and other property collected through fines to be transferred through the trust fund to the victims and the families of such victims⁴⁹.

The concept of a trust fund is defined in Art.79 of the Rome Statute. The Assembly of State Parties can create a trust fund for the benefit of victims under subsection (1) of Art. 79.⁵⁰ The Truth Commission submits that if the court believes that the defendant is not capable of compensating such a large number of victims in this case, it must seek alternative compensation. The trust fund established under Art. 79 of the Rome Statute is precisely what the victims in this instance require in order to rebuild their lives and be paid for their losses. As a result, the defendants and/or the Trust Fund should provide sufficient compensation to the victims.

[B] WHETHER VICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF WAR CRIME OF MURDER COVERED UNDER ART. 8 OF ROME STATUTE IN COUNTRY TITAN?

On January 5, 2022, the PTC II, in accordance with the procedure and conditions given in Art.61 of the Rome Statute⁵¹, confirmed the charges brought against Mr. Victor Yanakovich and committed the case to the Trial-Chamber of the Court (“**Trial Chamber**”)

⁴⁸ Victims Declaration, *supra* note 3.

⁴⁹ Rome Statute, Art. 79.

⁵⁰ *Id.*

⁵¹ Rome Statute, Art. 61.

for committing the war crime of murder covered under Art.8 of the Rome Statute through co-perpetration.⁵²

The PTC II allowed the Legal Representatives of the Victims to participate in the trial against Victor Yanakovich by considering the application submitted by the Truth Commission of Titan (“**Truth Commission**”) dated December 22, 2022. The prohibition of War Crime of Murder is considered part of customary international humanitarian law⁵³, and is criminalized in the Statutes of the ICTR⁵⁴ and SCSL⁵⁵ as well as under the ICC Statute⁵⁶. The term “**Murder**” means that the death of the victim result from an act or omission of the accused committed with the intent to kill, or with the intent to cause serious bodily harm which the perpetrator should reasonably have known might lead to death⁵⁷.

Victor Yanakovich is criminally responsible for commission of war crime of murder as [1.] the contextual elements as well as [2.] the specific elements under Art. 8(2)(c) are fulfilled in the present case.

[B.1] WHETHER THE CONTEXTUAL ELEMENTS OF ART. 8(2)(C) HAVE BEEN SATISFIED

The Victim’s Legal Representative (VLR) submits that in order to establish “the culpability of an accused for the crime of violence to life, health, and physical or mental well-

⁵² Rome Statute, Art. 8.

⁵³ JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, Vol. I, Rule 89, p. 311, (Cambridge University Press, 2005) [“**CIHL**”].

⁵⁴ UN Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006), November 8, 1994, Art. 4.

⁵⁵ UN Security Council, Statute of the Special Court for Sierra Leone, January 16, 2002, Art. 3.

⁵⁶ Rome Statute, Art. 8.

⁵⁷ Prosecutor v. Kvočka et al, Case No. IT-98-30/1-A, Appeals Chamber, ¶261 (Int’l Crim. Trib. for the Former Yugoslavia Feb. 28, 2005) [“**Kvočka et al.**”]; Prosecutor v. Kordić and Čerkez, Case No. IT-95-14/2-A, Appeals Chamber, ¶37 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 17, 2004) [“**Kordić and Čerkez**”]; Prosecutor v. Delalić et al., Case No. IT-96-21-A, Appeals Chamber, ¶423 (Int’l Crim. Trib. for the Former Yugoslavia Feb. 20, 2001), [“**Čelebići**”].

being of persons (murder) as a serious violation of Art. 3 common to the Geneva Conventions and of Additional Protocol II, the following contextual elements need to be fulfilled:

1. The death of a victim taking no active part in the hostilities;
2. That the death was the result of an act or omission of the accused or one or more persons for whom the accused is criminally responsible;
3. The intent of the accused or of the person or persons for whom he is criminally responsible
 - i. To kill the victim; or
 - ii. To wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death”⁵⁸

The contextual elements of Art. 8(2)(c) have been fully satisfied in the present case as there is [a.] an existence of an armed conflict not of an international character. [b.] The war crime of murder was in context of and associated with NIAC. [c.] The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

[B.1.1] There is an existence of an armed conflict not of an international character.

The VLR submits that the existence of armed conflict is the most fundamental requirement for the establishment of subject-matter jurisdiction in the prosecution of war crimes⁵⁹. For drone attacks to be categorized as a war crime, the attack must occur in the context of an armed conflict. The definition of a war crime is a violation of IHL that results in individual criminal liability⁶⁰. NIAC is a protracted armed confrontation between government armed forces and the forces of one or more armed groups⁶¹. [i.] The armed confrontation

⁵⁸ Setako, Case No. ICTR-04-81-A, Appeals Chamber, , ¶¶246,257&257 (Sept. 28, 2011) [“Setako”]; Kvočka et al., Appeals Chamber, ¶261; Kordić and Čerkez, Appeals Chamber, ¶37; Čelebići, Appeals Chamber, ¶423.

⁵⁹ WILLIAM A. SCHABAS, NADIA BERNAZ, ROUTLEDGE HANDBOOK OF INTERNATIONAL CRIMINAL LAW 145 (Feb. 2010).

⁶⁰ Geneva Convention III.

⁶¹ Lubanga, Trial Chamber, ¶512; Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law* 117-139 (Cambridge University Press, 2010); A. Cullen and M.D. Oberg, ‘Prosecutor v. RamushHaradinaj et al.: The International Criminal Tribunal for the Former Yugoslavia and the Threshold of Non-International Armed Conflict in International Humanitarian Law’ ASIL, vol. 12, issue 7, (2008); W.A.

between government forces and [ii] Targarian Liberation Force (TLF) qualifies to be a NIAC, as it reached a minimum level of intensity and the armed groups were organized⁶².

[B.1.1.a] There was intensity in the armed conflict

A non-international armed conflict need not produce massive loss of life. The ICTY had concluded in 2008 that even though the armed confrontations between the Macedonian forces and a national liberal organization resulted in 168 casualties over the course of the year, it constituted a non-international armed conflict⁶³

In determining intensity, the chamber⁶⁴ should take into account, the seriousness of attacks which need not be continuous and uninterrupted⁶⁵ and potential increase in armed clashes, their spread over territory and over a period of time, the duration⁶⁶ of the violence, the number of casualties as well as the number of persons and type of forces partaking in the fighting.

The Truth Commission submits that, on July 26, 2020, the attack on children and civilians in the Holy Cross School resulted in the death of 270 children and approx. 100 adults along with injuries sustained by others⁶⁷, with the Pre- Trial Chamber II recognizing the scale of atrocities qualifying the threshold for the invocation of the jurisdiction of the

Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* 229 (Cambridge University Press, 2007).

⁶² Prosecutor v. Tadić, Case No.IT-94-1-T, Trial Chamber, ¶562 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997), [**"Tadić"**].

⁶³ Prosecutor v. Boskoski, Case No.IT-04-82-T, Trial Judgment, ¶¶244 & 249 (Int'l Crim. Trib. for the Former Yugoslavia July 10, 2008) [**"Boskoski"**].

⁶⁴ Prosecutor v. RamushHaradinaj, Case No.IT-04-84-T, Trial Chamber, ¶49 (Int'l Crim. Trib. for the Former Yugoslavia April 3, 2008), [**"Haradinaj et al."**].

⁶⁵ Bemba Gombo, ¶140.

⁶⁶ *Id.*; Lubanga, Pre-Trial Chamber, Confirmation Decision, ¶235; Lubanga, Trial Chamber, ¶¶538, 545, 546 & 550; Prosecutor v. Germain Katanga, ICC-01/04-01/07, Trial Chamber, ¶¶1217-1218 (March 7, 2014), [**"Katanga"**]; Kordić and Čerkez, Appeals Chamber, ¶341; Prosecutor v. Limaj et al., Case No. IT-03-66-T, Trial Chamber, ¶171-173 (Int'l Crim. Trib. for the Former Yugoslavia November 30, 2005) [**"Limaj et al."**]; Čelebići et al., Trial Chamber, ¶186; Tadić, Trial Chamber, ¶562; Haradinaj et al., Trial Chamber, ¶49.

⁶⁷ Compromis, ¶28.

Court⁶⁸. Furthermore, the Appeals Chamber in the Galić Appeal Judgment highlighted that, depending on the circumstances of the case, the indiscriminate character of an attack can be indicative of the fact that the attack was indeed directed against the civilian population.⁶⁹ In the present case, drone attacks as well as firing by soldiers both were of indiscriminate nature. As testified by a survivor of the attack (VW2).⁷⁰

The attack was performed in pursuit of an illegitimate military objective in the ongoing NIAC between the government, OFC and the organized armed group TLF continuing since March 2019 to September 2019⁷¹ preceded by skirmishes and attacks⁷² resulting in “The Situation” on July 26, 2020. The resultant damage demonstrates a sufficient degree of intensity in the conflict which exceeds “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature”.⁷³

[B.1.1.b] The armed groups were organized

For establishing the existence of a NIAC, it must be proved that armed groups show a sufficient degree of organization to enable them to carry out protracted armed confrontations⁷⁴. An “organized armed group”⁷⁵ is the armed wing of a non-state party to a non-international armed conflict.

When deciding if a body was an organized armed group, the force or group’s ability to plan military operations and put them into effect; and the extent, seriousness, and intensity

⁶⁸ *Id.*

⁶⁹ Prosecutor v. Stanislav Galić, Case No.IT-98-29-A, Appeal Chamber, ¶132 (Int’l Crim. Trib. for the Former Yugoslavia 30 November 2006) [“Galić”].

⁷⁰ Compromis, Witness Testimonials, Victim Witness-2 at pp. 27.

⁷¹ Compromisat¶12.

⁷² *Id.* at ¶7.

⁷³ Rome Statute, Art. 61.

⁷⁴ Lubanga, Trial Chamber, ¶536; Katanga, Trial Chamber, ¶1185; Bemba Gombo, Trial Chamber, ¶¶134-136.

⁷⁵ How Does Law Protect In War, ARMED GROUPS, available at <https://casebook.icrc.org/glossary/armedgroups>.

of any military involvement, group's internal hierarchy; the command structure should be taken into account.⁷⁶

In the present case, the TLF conducted a drive to form a TLF militia comprising of young civilian men and women⁷⁷ and was responsible for engaging in severe violence against critical infrastructure of Titan and for the abductions of key political leaders of OFC⁷⁸. The TLF shows a hierarchical structure present and the ability to implement the basic obligations of the Common Art. 3⁷⁹ which is recognized as the 'minimum yardstick'⁸⁰ binding in all armed conflicts and reflects 'elementary considerations of humanity'⁸¹. The TLF fulfils the requirement of a 'minimum of organization'⁸² which the ICRC requires for parties in an armed conflict. The attacks conducted by the TLF during the period of August 2013 and February 2019 indicates their organization⁸³, ability to plan and implement operations.

***[B.1.2] The act of war crime of murder was in context of and associated with
NIAC***

Another important requirement is that of a nexus⁸⁴ between the alleged offence and a situation of armed conflict (international or non-international)⁸⁵. It is not necessarily the case

⁷⁶ Lubanga, Trial Chamber, ¶537.

⁷⁷ Compromis, ¶7.

⁷⁸ Compromis, ¶¶13&6.

⁷⁹ Boškoski, Trial Chamber, ¶195.

⁸⁰ ICJ, Military and Paramilitary Activities in and against Nicaragua case, Merits, Judgment, 1986, ¶¶218-219.["**Nicaragua case**"].

⁸¹ Nicaragua case, ¶¶218-219.

⁸² ICRC Commentary of 2016, ARTICLE 3: CONFLICTS NOT OF AN INTERNATIONAL CHARACTER, at ¶423, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC> ["**ICRC Commentary**"].

⁸³ Katanga, Trial Chamber, ¶1185; Bemba Gombo, ¶233.

⁸⁴ Tadić, ¶70; Tadić, Opinion and Judgment, ¶561; Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-T, Trial Chamber, ¶43 (Int'l Crim. Trib. for the Former Yugoslavia June 25, 1999) ["**Aleksovski**"].

⁸⁵ EOC, ICC, 18 UN Doc. PCNICC/2000/1/Add. 2 (2000); K. DORMANN, L. DOSWALD-BECK & R. KOLB, ELEMENTS OF WAR CRIMES UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: SOURCES AND COMMENTARY, (Cambridge University Press, 2003).

that a perpetrator must himself be a member of a party to the armed conflict⁸⁶ or his conduct need not be solely governed by the armed conflict⁸⁷.

As noted by the ICTY, a particular act must be ‘closely related to the hostilities occurring in the parts of territories for that act to be committed in the context of an armed conflict’⁸⁸. A war crime “is shaped by or dependent upon the environment- the armed conflict- in which it is committed”⁸⁹. The ICTR Appeals Chamber has held that “convictions for war crimes require that the offences charged be closely related to the armed conflict”⁹⁰. However, the required nexus “need not be a causal link, but that the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit the crime, his decision to commit it, the manner in which it was committed”⁹¹. Hence, if it can be established that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict⁹².

⁸⁶ Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Appeals Chamber, ¶444 (June 1, 2001) [“**Akayesu**”]; Prosecutor v. Kunarac et al., Case No. IT-96-23-T & IT-96-23/1-T, Trial Chamber, ¶407 (Int’l Crim. Trib. for the Former Yugoslavia February 22, 2001) [“**Kunarac et al.**”]; Kunarac et al., Appeals Chamber, ¶58.

⁸⁷ Katanga, Trial Chamber, ¶1176.

⁸⁸ Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 1995, ¶70. This interpretation has been followed by the ICC; ICC, Katanga Trial, ¶1176, Bemba Trial, ¶¶142-144.

⁸⁹ Kunarac et al., Appeals Chamber, ¶58; Kunarac et al. Appeal ¶¶57 & 59; Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-1-AR72, October 2nd 1995, ¶¶67 and 70; Kunarac et al., ¶568.

⁹⁰ Prosecutor v. Laurent Semanza, ICTR-97-20-A, Appeals Chamber, May 20, 2005, [“**Semanza**”], ¶¶368-369; Semanza, Trial Chamber, ¶¶435-436 and ¶¶516-522.

⁹¹ Prosecutor v. Ephrem Setako, ICTR-04-81, Appeals Chamber, Sept. 28, 2011, [“**Setako**”], ¶249; *see also*, ICTR, Prosecutor v. Georges Rutaganda, Case No. ICTR-96-3-A, Appeals Chamber, May 26, 2003, [“**Rutaganda**”], ¶569; Kunarac et al., Appeals Chamber, ¶¶58; Prosecutor v. Milomir Stakić, IT-97-24-A, Appeals Chamber, (Int’l Crim. Trib. for the Former Yugoslavia March 22, 2006), [“**Stakić**”], ¶¶342; Tadić, Appeal Decision on Jurisdiction, ¶¶70.

⁹² Setako, Appeals Chamber, ¶249; Rutaganda, Appeals Chamber, ¶569; Kunarac et al., Appeals Chamber, ¶58; Stakić, Appeals Chamber, ¶342; Tadić, Appeal Decision on Jurisdiction, ¶70.

Victor Yanaovich took advantage of the armed conflict, worked in close association with the OFC⁹³ and ruined the lives of the Targarian community⁹⁴ for his personal gains in order to increase his market capitalization all over the world⁹⁵.

The drones engaged in the suppression of the opposition from the Tango region⁹⁶ were acquired from the United States strictly for defence⁹⁷. Victor Yanakovich served as the chief technician of Project Hawk during the period of the crime committed⁹⁸ and later came to be appointed as head of Titan's of the drone programme⁹⁹. He completed the training period and "was given absolute control over the offensive"¹⁰⁰ being the only qualified person with understanding of the algorithms of the drones employed¹⁰¹. He exercised "enormous control over the active use of these advanced weapons technology systems against the Targarian Community"¹⁰².

[B.1.3] The perpetrator was aware of factual circumstances that established the existence of an armed conflict

The *nullum crimen sine lege*¹⁰³ principle does not require that an accused knew the specific legal definition of each element of a crime he committed¹⁰⁴. He was aware of the factual circumstances that is implicit in the terms "took place in the context of and was associated with"¹⁰⁵, e.g., that armed forces were involved in the armed conflict¹⁰⁶. The

⁹³ Compromis, ¶20; *see also*, Compromis, ¶9.

⁹⁴ Compromis, ¶28.

⁹⁵ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 19; Defence Witness-1 at pp. 21; Prosecutor Witness-1 at pp. 16.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Compromis, ¶8.

⁹⁹ Compromis, Witness Testimonials, at pg. 16.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Compromis, Annex-II-Ground Report | Truth Commission of Titan, pp. 32.

¹⁰³ Rome Statute, Art. 22.

¹⁰⁴ Katanga, Pre-Trial, ¶297; *see also*, Kordić and Čerkez, Appeals Chamber, ¶311.

¹⁰⁵ Bemba Gombo, ¶146; *see also*, Kordić and Čerkez, Appeals Chamber, ¶311.

¹⁰⁶ Kordić and Čerkez, Appeals Chamber, ¶311.

criminal liability in question must be sufficiently foreseeable and the law providing for such liability “must be sufficiently accessible at the relevant time for it to warrant a criminal conviction and sentencing”¹⁰⁷ The principle requires that as to foreseeability, the accused “must be able to appreciate that the conduct is criminal in the sense generally understood, without reference to any specific provision”¹⁰⁸.

[B.2] WHETHER THE SPECIFIC ELEMENTS OF ART. 8(2)(C)(I) HAVE BEEN SATISFIED OF WAR CRIME OF MURDER?

The war crime under Art. 8(2)(c) of the Statute¹⁰⁹ has been committed as Victor Yanakovich beyond all reasonable doubt as he [a.] killed one or more persons. [b.] Such a person or persons were either hors de combat, or were civilians, medical personnel, or religious personnel taking no active part in hostilities.

[B.2.1] The perpetrator killed one or more persons

It has been held in multiple authoritative pronouncements of this Court that the term civilian includes persons who have taken no active part in hostilities.¹¹⁰ The accused’s actions resulted in the loss of lives of 270 children and 100 adults “aggravated by injuries sustained by many others”¹¹¹. This, pre conditionally, qualifies the threshold of “one or more persons” to charge Victor Yanakovich with ‘War Crime of Murder’.

¹⁰⁷ Milutinovic et al, JCE Decision, IT-99-37-AR72, (Int’l Crim. Trib. for the Former Yugoslavia May 21, 2003) ¶37 [“**Milutinovic**”].

¹⁰⁸ Hadzihasanovic et al., Decision on Command Responsibility, July 16, 2003, (IT-01-47-AR72), ¶34; *see also*, Milutinovic, Decision on Dragoljub Ojdanic’s Motion Challenging Jurisdiction- Joint Criminal Enterprise, May 21 2003, IT-99-37-AR72, ¶¶37-39.

¹⁰⁹ Rome Statute, Art. 8(2)(c).

¹¹⁰ Tadić, ¶637-638; Akayesu, ¶582; Galić, AJ, ¶144; Prosecutor v. MomčiloKrajišnik, Case No. IT-00-39-T, (Int’l Crim. Trib. for the Former Yugoslavia) [“**Krajišnik**”], Trial Judgement, ¶706; Prosecutor v. Mrkšić et al., Case No. IT-95-13/1-T, Trial Judgement, (Int’l Crim. Trib. for the Former Yugoslavia) ¶463[“**Mrkšić**”].

¹¹¹ Compromis, ¶28.

[B.2.2] Such a person or persons were either hors de combat, or were civilians, medical personnel, or religious personnel taking no active part in hostilities

‘Civilians’ in non-international armed conflict are “all persons who are neither members of state armed forces nor members of an organized armed group”¹¹². *Ongwen*¹¹³ clarifies that ‘civilian population’ refers to civilians as a collective of members who are neither a part of the state forces nor a part of the organized armed groups. Further, it is sufficient if the civilian population were susceptible to the risks of the attack.¹¹⁴ The number and proportion of civilians must be taken into consideration in assessing whether the attacks were directed against a civilian population.¹¹⁵ The children and adults killed in the attack of July 26, 2020, qualify as ‘civilians’.

Under both CIL and treaty law, the prohibition on directing attacks against the civilian population or civilian object is absolute. there is no room to invoke military necessity as a justification.¹¹⁶

On July 26th, the drones were deployed at the educational unit. *Ongwen*¹¹⁷ held that an attack was to be deemed as directed against civilians where ‘everyone is targeted at a mixed military-civilian population’, and it thereby becomes difficult to take precautionary measures or distinguish between ‘legitimate targets’ and ‘protected persons’ i.e., civilians and children. The civilians shall thus be considered the primary target of the attack.

¹¹² ICRC, How Does Law Protect in War?, *Civilian Population*, ICRC Casebook, available at [Civilian population | How does law protect in war? - Online casebook \(icrc.org\)](https://www.icrc.org/online-casebook).

¹¹³ The Prosecutor v. Dominic Ongwen, Trial Judgment, Trial Chamber IX, 4 February 2021, ICC-02/04-01/15 [“**Ongwen**”].

¹¹⁴ Prosecutor v. Bosco Ntaganda, Pre Trial Chamber II, Decision Concerning the Organization of Common Legal Representation of Victims, 2 December 2013, ICC-01/04-02/06-160, ¶904. [“**Ntaganda**”].

¹¹⁵ The Prosecutor v. Radovan Karadžić, IT-95-5-D, Trial Judgment, (Int’l Crim. Trib. for the Former Yugoslavia May 16, 1995) ¶¶474-476 [“**Karadzic**”].

¹¹⁶ Protocol Additional to the Geneva Conventions of 8 August 1949, and relating to the Civilians and Civilian Population (Protocol I), 8 June 1977, 1125 U.N.T.S. 3, Articles 51(2), 85(3)(a), [“**Additional Protocol I**”].

¹¹⁷ *Ongwen*, ¶2760.

CIHL provide special protection, care and assistance to children in situation of hostilities¹¹⁸, the UNSC called upon parties to armed conflicts “to undertake such feasible measures during armed conflicts to minimize the harm suffered by children”¹¹⁹. The accused knowingly targeted the educational facility filled with children and adults.¹²⁰

Further, IHL requires that in circumstances of doubt as to status of persons whether civilians or militants, they must be believed to be civilians and protected from attack¹²¹. Further, the mere directing of the attack that could potentially affect civilians is sufficient to prove the offense.¹²²

In the present case, the children and adults harmed qualify as civilians as there is absence of evidence as to any participation in hostilities or affiliation to any of the belligerent parties involved in the conflict.

[C.] WHEATHERVICTOR YANAKOVICH CAN BE PROSECUTED FOR COMMISSION OF GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW UNDER GENEVA CONVENTIONS AND ITS ADDITIONAL PROTOCOLS?

Victor Yanakovich’s conduct and actions lead to grave breaches of International Humanitarian Law and violation of its fundamental principles-[C.1] the principle of ‘protection of non-combatants’, [C.2] the principle of ‘distinction’, [C.3] the principle of ‘proportionality’.

¹¹⁸ CIHL, Rule 135.

¹¹⁹ UN Committee on the Rights of the Child, Report on the Second session, UN Doc. CRC/C/10, 19 October 1992, ¶ 73.

¹²⁰ Compromis, ¶20.

¹²¹ CIHL, Rule 6, pp. 23-24.

¹²² Ongwen, ¶2758.

[C.1] PRINCIPLE OF PROTECTION OF NON-COMBATANTS HAS BEEN VIOLATED

ICTY has held on various occasions that the absolute prohibition against attacking civilians “may not be derogated from because of military necessity”.¹²³ Protecting civilians or non-combatants is “a cornerstone of IHL”.¹²⁴ ‘Non-combatant’ status is granted to civilians who do not take a direct part in hostilities¹²⁵. The primary object of the attack in question must be a civilian population, which therefore cannot merely be an incidental victim.¹²⁶ A “civilian population” comprises all persons who are civilians as opposed to members of armed forces and other legitimate combatants.¹²⁷

There must be practical measures in place to prevent errors and minimize the harm to civilians¹²⁸. The prohibition on directing attacks against civilians is also embedded in Protocol II, Amended Protocol II and Protocol III to the Convention on Certain Conventional Weapons¹²⁹. Under the Rome Statute, “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” constitutes a war crime in non-international armed conflicts¹³⁰.

¹²³ Galić Appeals Chamber, ¶54, 130, 136 Blaškić Appeal Chamber, ¶109, and Kordić and Čerkez Appeal Chamber, ¶54.

¹²⁴ ICRC, How does Law Protect in War? *Protection of Civilians*, ICRC Casebook, available at [Protection of Civilians | How does law protect in war? - Online casebook \(icrc.org\)](https://www.icrc.org/eng/doc/public/6250/1/protection-of-civilians-how-does-law-protect-in-war-online-casebook-icrc-org.pdf).

¹²⁵ CIHL, Rule 1, pp. 6.

¹²⁶ Situation in the Republic of Kenya, ICC-01/09-19, PTC, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ¶82.

¹²⁷ Bemba Gombo, PTC II, ¶78.

¹²⁸ R. Cryer, D. Robinson and S. Vasiliev, AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE, 2nd ed., CUP, 2007; Galić, Appeals Chamber, ¶87.

¹²⁹ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and other Devices, “**Protocol II**” to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, “**CCW**”, Geneva, October 10, 1980, Art. 3(2); Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996, “**Amended Protocol to the CCW**”, Geneva, October 10, 1980, Art. 3(7); Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons, “**Protocol III to the CCW**”, Geneva, October 10, 1980, Art.2(1).

¹³⁰ Rome Statute, Art. 8(2)(e)(i).

Victor Yanakovich failed to comply with the principle of protection of non-combatants. He actively formulated the plan that was executed on July 26, 2020, on the Holy Cross School which qualifies as a civilian area, with children and adults taking no active part in hostilities present¹³¹. CIHL requires removal of civilians and civilian objects from the vicinity of military objectives¹³². No measures were taken to protect the civilians. Victor's act of the attack and omission to take measures to protect civilians led to the "death of 270 children and close to 100 adults, aggravated by injuries sustained by many others"¹³³

[C.2] PRINCIPLE OF DISTINCTION

Prohibition of indiscriminate attacks that cannot be directed at a specific military objective is a cardinal principle of International customary law.¹³⁴ The ICC has established that while considering an attack on the civilian population, several non-exhaustive relevant factors need to be gauged- "the means and methods used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack", and the "form of resistance to the assailants at the time of the attack".¹³⁵

Rather a distinction is to be made between the civilian population and combatants or between civilian and military objectives¹³⁶. The parties to a conflict are "under an obligation to remove civilians, to the maximum extent feasible from the vicinity of military objectives and to avoid locating military objectives within or near densely populated areas"¹³⁷. The failure to fulfil this obligation "does not relieve the attacking side of its duty to abide by the

¹³¹ Compromis, ¶¶20, 21, 28 and Witness Testimonials, Victim Witness- 2, pp. 27.

¹³² CIHL, Rule 24.

¹³³ Compromis, ¶28.

¹³⁴ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, July 8, 1996, 1 ICJ Rep. 1996, p. 126[**"Advisory Opinion"**];Prosecutor v. Milan Martić, Trial Chamber, 12 June 2007, IT-95-11-T, ¶11 [**"Martić"**].

¹³⁵ Bemba Gombo, ¶153; Mrkšić, Appeals Chamber, ¶30, Kunarac, Appeals Chamber, ¶91.

¹³⁶ Prosecutor v. Milosevic, IT-98-29/1-A, Appeals Chamber, (Int'l Crim. Trib. for the Former Yugoslavia November 12th, 2009), ¶54. [**"Milosevic"**].

¹³⁷ Galic, Appeals Chamber, ¶61.

principles of distinction and proportionality when launching an attack”¹³⁸. Perpetrator was fully aware of the facts and not evaluating the possible excessiveness of the attack, the same would not lead to his exoneration.¹³⁹ With this respect the perpetrator is only required to have the extent of the damage which would be caused¹⁴⁰. Geneva Convention recognizes¹⁴¹ and Rome Statute criminalizes the act of intentionally directing attack against buildings dedicated to education.¹⁴²

The means and method of the attack chosen should be with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.¹⁴³ The ICJ, in its Advisory Opinion, equated the use of indiscriminate weapons with a deliberate attack on civilians.¹⁴⁴

In the present case, the accused has failed to comply with the principle of distinction even with the knowledge of civilians present in the targeted area¹⁴⁵. Victor was aware of children and adults not taking part in hostilities present in the Holy Cross School during the planning stage and execution stage of the operations¹⁴⁶.

[C.3] PRINCIPLE OF PROPORTIONALITY

The principle of proportionality cannot be ignored in action and in the implementation and application of the Additional Protocol II¹⁴⁷ applicable in non-international armed conflicts¹⁴⁸. The principle has been included in the Amended Protocol II to the Convention on Certain Conventional Weapons¹⁴⁹.

¹³⁸ *Id.*

¹³⁹ Tadić, Trial Judgment, ¶165.

¹⁴⁰ Compromis, ¶21.

¹⁴¹ Additional Protocol II, Article 15.

¹⁴² Rome Statute, Article 8(2)(e)(iv).

¹⁴³ Additional Protocol I, Article 57(2)(a)(ii).

¹⁴⁴ ICJ, Nuclear Weapons case, ¶78.

¹⁴⁵ Compromis, ¶20.

¹⁴⁶ *Id.*

¹⁴⁷ Additional Protocol II.

¹⁴⁸ MICHAEL BOTHE, KARL JOSEPH PARTSCH, WALDEMAR A. SOLF (eds.), NEW RULES FOR VICTIMS OF ARMED CONFLICTS, MARTINUS NIJHOFF, The Hague, 1982, pp. 678.

¹⁴⁹ Amended Protocol II to the CCW, Art. 3(8)(c).

A ‘definite military advantage’ is one that is more than potential or indeterminate, although the advantage may manifest at the tactical or operational level of the hostilities.¹⁵⁰ The temporal usage of the school by the TLF militia shall not defeat the presumption of the school from being considered a civilian object.¹⁵¹ It is thus submitted that the attack offered no ‘definitive military advantage’ or contribution as the death of few TLF members were accompanied by the lives of hundreds of innocent civilians¹⁵²

In the present case, the report of the number of deaths i.e., of 270 children and 100 adults, with severe casualties suffered by the rest, indicates that the attack performed on the Holy Cross School was disproportionate¹⁵³. Hence, the accused, Victor Yanakovich failed to adhere to the core principle of proportionality under IHL.

[D] WHETHER VICTOR YANAKOVICH CAN BE HELD ACCOUNTABLE FOR COMMITTING THE WAR CRIME OF MURDER?

VLR submits that Victor Yanakovich is criminally responsible for committing war crime of murder in the territory of Titan (2.I) through co-perpetration under Art. 25(3)(a) of the Rome Statute¹⁵⁴ and (2.II) with intent and knowledge.

[D.1] VICTOR YANAKOVICH IS CRIMINALLY RESPONSIBLE UNDER ART. 25(3)(A) OF THE ROME STATUTE.

Art. 25(3) (a) covers the notions of direct perpetration¹⁵⁵, co-perpetration¹⁵⁶ and indirect perpetration¹⁵⁷. To establish the crime under Art. 25(3) (a) of the Statute, the VLR

¹⁵⁰ Olivier Schmitt, Wartime paradigms and the future of western military power, International Affairs, Volume 96, Issue 2, March 2020, pp. 408.

¹⁵¹ Additional Protocol I, Article 52(3).

¹⁵² Compromis, ¶28.

¹⁵³ *Id.*

¹⁵⁴ Rome Statute, Art. 25(3)(a).

¹⁵⁵ Lubanga, Pre-Trial Chamber, Decision on the confirmation of charges, ¶318.

¹⁵⁶ *Id.*

has to fulfill different tests to the doctrine of co-perpetration.¹⁵⁸ The common plan or agreement forms the basis of a reciprocal or mutual attribution of the different contributions holding every co-perpetrator responsible for the whole crime¹⁵⁹.

The commission of a crime jointly with another person involves five requirements. As defined by the Pre-Trial Chambers in the Lubanga case.¹⁶⁰

[D.1.1] There was existence of a common plan or agreement

It is a settled position that the VLR must establish the existence of a common plan or agreement between two or more persons, including the alleged perpetrator.¹⁶¹ Furthermore, the agreement need not be explicit, and that its existence can be inferred from the subsequent concerted action of the co-alleged perpetrators.¹⁶² A common plan has previously been evinced from meetings¹⁶³ and regular briefings to the perpetrators¹⁶⁴. They were acquiesced that the drones were prototypes and were not precise weapons.¹⁶⁵ The Accused, who supervised the attacks¹⁶⁶, was aware that the drones had the capacity to destroy the area equal to the size of a standard football field¹⁶⁷. Where the act of one accused contributes to the purpose of the other, and both acted simultaneously, in the same place and within full view of each other, over a prolonged period of time, the argument that there was no common purpose is plainly unsustainable.¹⁶⁸

¹⁵⁷ *Id.*

¹⁵⁸ Ntaganda, Warrant for Arrest, ¶67; Prosecutor v. William Samoei Ruto and Joshua Arap Sang, (ICC, ICC-01/09-01/11, Pre-Trial Chamber-II, 3 July 2012) ¶5; Shachar Eldar, Indirect Co-Perpetration (February 10, 2014). Forthcoming, Criminal Law & Philosophy, 8 2014, pp 5.

¹⁵⁹ Stakić, Trial Chamber, ¶440; Eser, in: Cassese *et al.* (eds.), *The Rome Statute of the ICC* (2002) 767, 789 *et seq.*; Werle and Jessberger (2007) 5 JICJ.953, 958; *id.*, Principles (2014) 205 *et seq.*

¹⁶⁰ Lubanga, Trial Chamber, ¶1018.

¹⁶¹ Katanga, PTC I, Decision on the confirmation of charge, ¶522.

¹⁶² Lubanga, Pre-Trial Chamber, ¶345.

¹⁶³ The Prosecutor v. Uhuru Muigai Kenyatta, ICC-01/09-02/11, January 23 2012, Confirmation of Charges, ¶308.

¹⁶⁴ Lubanga, Trial Chamber, ¶373.

¹⁶⁵ Compromis, ¶16.

¹⁶⁶ Compromis, ¶21.

¹⁶⁷ Compromis, Witness Testimonials, Prosecutor Witness- 2, pp. 18.

¹⁶⁸ Prosecutor v. Anto Furundzija, Appeals Chamber, IT-95-17/1-A, Jul.21.2000.

A meeting was held among Jack Rider, the accused and four other army officials¹⁶⁹ after getting information of a potential assembly being organized in Tango¹⁷⁰. In the meeting, a common plan was discussed and agreed upon by the majority including the accused himself, to conduct a strike covering the entire compound of Holy Cross School¹⁷¹. After that, the accused and Mr. Jack Rider planned the entire operation¹⁷² which was later implemented on the same doomed day of July 26, 2020¹⁷³ and caused the atrocities.

The Lubanga AC held that it is ‘sufficient for the common plan to involve “a critical element of criminality”¹⁷⁴, i.e. ‘that it is virtually certain that the implementation of the common plan led to the commission of the crimes at issue’¹⁷⁵. *In casu* implementation of the agreed plan at 3 PM on July 26, 2020 led to the killings of 270 children and nearly 100 adults also injuring many others as per the report of October 01, 2020¹⁷⁶ which was done without giving any thought to it. This is obvious from the timing of the plan and its execution. The information about the said potential assembly was received at 10:15 am on July 26, 2020 and by 1 pm of the same day the accused, Jack Rider and 4 army officers were done discussing the plan and agreed upon the same within the inadequate time of less than 3 hours. The same plan was then started to be executed within 20 minutes of informing commanders of the army of Titan¹⁷⁷. All these facts point out to the lack of thought and due diligence given to the planning of such an attack of high intensity.

[D.1.2] Victor Yanakovich contributed in the commission of the crime

ICC has propounded that the alleged perpetrator must provide an essential contribution to the common plan that resulted in the commission of the crime.¹⁷⁸ But it does

¹⁶⁹ Compromis, ¶20.

¹⁷⁰ Compromis, ¶19.

¹⁷¹ Compromis, ¶21.

¹⁷² *Id.*

¹⁷³ Compromis, ¶22.

¹⁷⁴ Lubanga, Appeals Chamber, ¶446.

¹⁷⁵ Lubanga, ¶451; Prosecutor v. BléGoudé, Decision on the Confirmation of Charges, PTC, ¶140.

¹⁷⁶ Compromis, ¶28.

¹⁷⁷ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

¹⁷⁸ Lubanga, Trial Chamber, ¶¶1006 &1018(ii).

not define the word “essential” in this context.¹⁷⁹ However, given that the alleged perpetrator alone need not exercise control over the crime¹⁸⁰ “essential” cannot mean that the individual alleged perpetrator must have had the power to stop the crime or frustrate its commission¹⁸¹ essentially negated Victor’s defense that he was not either in charge of the suspend command nor did he pull the trigger.

The principal perpetrator of a crime is that person who can ‘control or mastermind its commission’ by deciding where and how the crime would be committed, regardless of whether that person was the physical perpetrator of the crime¹⁸². In cases of ‘joint commission’ of a crime, which the judges dubbed ‘co-perpetration’, the indicator of the accused’s ‘control’ over the collective crime was considered their ‘essential contribution’ to the joint criminal effort and their power ‘to frustrate the commission of the crime by not performing their tasks’¹⁸³. The ‘essential contribution’ requirement under Art. 25(3)(a) was differentiated from accessory liability under subparagraph (d), which merely required ‘any other’ type of contribution.¹⁸⁴ *In casu* the role and contribution of Victor Yanakovich was essential for the commission of the crime as he was the one who

In the case of *The Prosecutor v. Thomas Lubanga*, the Court held that the role of co-alleged perpetrator is to be assessed on a case-by-case basis.¹⁸⁵ This assessment involves a flexible approach, undertaken in the context of a broad inquiry into the overall circumstances of a case.¹⁸⁶

In the present case, Victor Yanakovich, chief technician of Project Hawk¹⁸⁷ was involved in planning the strike¹⁸⁸ and allowed the strike to happen despite having the knowledge that there will be classes being organized in the premises of the said school during

¹⁷⁹ Prosecutor v. William Samoei Ruto and Joshua Arap Sang, (ICC, ICC-01/09-01/11, Pre-Trial Chamber-II, July 3, 2012) ¶11.

¹⁸⁰ Lubanga, Trial Chamber, ¶994.

¹⁸¹ Lubanga, Trial Chamber, ¶¶322, 341- 342 & 366.

¹⁸² Lubanga, Confirmation of Charges Decision, ¶330.

¹⁸³ Lubanga, Confirmation of Charges Decision, ¶¶346-347.

¹⁸⁴ Lubanga, Trial Chamber, ¶999.

¹⁸⁵ Lubanga, Trial Chamber, ¶1001.

¹⁸⁶ *Id.*

¹⁸⁷ Compromis, ¶ 8.

¹⁸⁸ Compromis, ¶ 20.

the hours of the planned operations¹⁸⁹. Victor also dismissed the suggestion of the area being a sensitive zone¹⁹⁰. Moreover, as per the testimony of Mr. Alex Chamberlain, Victor was given absolute control over the use of drones against the Targarians since he was the only individual who understood the anatomy of the algorithms that worked behind these drones¹⁹¹.

[D.1.3] Victor Yanakovich was aware that by implementing the common plan this consequence will occur in the ordinary course of events

The words "will occur", read together with the phrase "in the ordinary course of events", make clear that the required standard of occurrence of the consequence in question is near but not absolute certainty. The standard is therefore "virtual certainty", otherwise known as "oblique intention". The Chamber considers that the words used in Art. 30 are sufficiently clear for it to be able to rule in this connection. It therefore adopts the findings of PTC II in *Bemba*¹⁹².

Thus, this form of criminal intent presupposes that the person knows that his or her actions will necessarily bring about the consequence in question, barring an unforeseen or unexpected intervention or event to prevent its occurrence. In other words, it is nigh on impossible for him or her to envisage that the consequence will not occur."¹⁹³

In casu Victor being a specialist in the field of weaponization of artificial intelligence¹⁹⁴ was fully aware about the consequences of the drone strikes. In the ordinary course of events a drone attack on a populated school area is meant to cause chaos. Victor was also warned by two army officers about the physical classes being conducted in the Holy Cross School which he dismissed as irrelevant¹⁹⁵.

Victor, an expert in the field of weaponization¹⁹⁶, used lethal autonomous drones for the planned attack¹⁹⁷. He had also spent 1.5 years in the US to learn active warfare using

¹⁸⁹ Compromis, ¶ 20.

¹⁹⁰ *Id.*

¹⁹¹ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

¹⁹² Katanga, Trial Chamber I, ¶530.

¹⁹³ Katanga, Trial Judgement, pp.43.

¹⁹⁴ Compromis, ¶ 8.

¹⁹⁵ Compromis, ¶ 20.

¹⁹⁶ Compromis, ¶ 8.

drone technology¹⁹⁸ which clearly indicates that Victor was highly eligible and qualified to understand the consequences of using such highly lethal weapons. Victor had absolute control over the drones¹⁹⁹ which were used to the attack and he could have easily called off the attack within 7 seconds which was provided to suspend the ‘kill’ command²⁰⁰ as he had the training of making decisions that can adversely impact human life within 3-4 seconds of first sighting potential collateral damage²⁰¹. Moreover, “in present time technology has not reached a stage where a drone can operate without any human control”²⁰². It would need assistance and inputs from the operator and the final authority lies on the operator which is Victor in the present matter.

A common feature of modern warfare is that the decision-making process leading to the use of force may be distributed across a large number of actors at the strategic, operational and tactical levels, before and during an attack²⁰³. The case of AWS pushes this trend to an extreme, as the preprogrammed nature of an AWS supposes that its effects will not only be determined by decisions made by multiple people along the military command-and-control chain (users at different levels and weapon operators) but also by engineers and technicians during the development phase. Another interpretation is that the responsibility for exercising and implementing legal agency may reside with multiple people— and possibly systems of people—in the command-and-control chain²⁰⁴. From this perspective, all members of the command-and-control chain who contribute to the targeting process are seen as exercising and implementing legal agency.

¹⁹⁷ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

¹⁹⁸ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

¹⁹⁹ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 15.

²⁰⁰ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 18.

²⁰¹ Compromis, Witness Testimonials, Victim Witness-1 at pp. 24.

²⁰² Compromis, Witness Testimonials, Victim Witness-1 at pp. 26.

²⁰³ Ekelhof and Persi Paoli (note 7); Bo, M., ‘The human–weapon relationship in the age of autonomous weapons and the attribution of criminal responsibility for war crimes’, Conference paper presented at We Robot 2019, University of Miami Law School, Apr. 2020, p. 10; and Amoroso and Benedetta (note 47).

²⁰⁴ Ekelhof and Persi Paoli; Schulzke, M., ‘Autonomous weapons and distributed responsibility’, *Philosophy and Technology*, vol. 26 (June 2013); CCW Convention, Considerations by Israel; CCW Convention, GGE LAWS, ‘Reflections by the Bolivarian Republic of Venezuela on emerging technologies in the area of lethal autonomous weapons systems (LAWS) and the mandate of the group of governmental experts (GGE)’, Sep. 2020; and CCW Convention, Commentary by Germany.

[D.1.4] Victor Yanakovich was aware that he provided an essential contribution to the implementation of the common plan

The suspects must all be mutually aware and mutually accept that implementing their common plan may result in the realization of the objective elements of the crime²⁰⁵. They must be aware of the factual circumstances enabling him or her to jointly control the crime²⁰⁶.

Victor was fully aware about the consequences of his actions and that of the planned attack. As already established, the consequence was fully anticipated and was within the ordinary course of events. Moreover being a specialist in drone technology he was fully aware about the lethality of the drones.

[D.1.5] Victor Yanakovich was aware of the factual circumstances that established the existence of an armed conflict and the link between these circumstances and his conduct.

To establish criminal liability, the perpetrator must know that such circumstances exist²⁰⁷ and to establish such knowledge, the perpetrator must know of the ‘wider context of his acts, and that his acts are part of the attack’²⁰⁸ The Accused was well aware about the nature of the weapons used in the attack.²⁰⁹

The Accused was fully aware that he was implementing the common plan which he planned along with Mr. Jack Rider in the presence of four other army officials.

Furthermore, he had full knowledge that the consequences of his acts and omissions would entail commission of war crime of murder which can be inferred from the position of authority and vast experience of drone technology he held.

²⁰⁵ Lubanga, Trial Chamber, ¶352.

²⁰⁶ Lubanga, PTC, Decision on Confirmation of Charges, ¶366-7.

²⁰⁷ Rome Statute, Art.30(3).

²⁰⁸ Kunarac, Appeals Chamber, ¶269.

²⁰⁹ Compromis, ¶21.

**[D.2] VICTOR YANAKOVICH HAD INTENT AND KNOWLEDGE OF THE CRIME
COMMITTED UNDER ARTICLE 30 OF THE ROME STATUTE**

The ICTY Prosecution defined the mental element of ‘unlawful attacks on civilians’ in the Kordic and Cerkez case to be when the civilian status was known or should have been known and the attack to be wilfully directed at them.²¹⁰ The ICC focuses on intent and knowledge by distinguishing between ‘conduct, consequences and circumstances’. In order to intend a conduct, a person must ‘mean’ to engage in conduct; it is not sufficient if the conduct was brought about inadvertently. To know of a circumstance means to have ‘awareness’ that it exists; mere suspicion is not sufficient unless it amounts to some amount of wilful blindness or some other high degree of awareness or advertence to the existence of the circumstance²¹¹. In present times, *actus non facit reum nisi mens sit rea*²¹² is a basic requirement common to contemporary legal systems²¹³ which is basically a requirement of some element of moral blameworthiness - a guilty mind²¹⁴. Intent and knowledge are adopted conjunctively in the Rome Statute because one cannot perform an action or cause a consequence intentionally one also has knowledge of the circumstances in which that action or consequence was committed²¹⁵. *In casu* Victor satisfied both the elements of intent and knowledge.

[D.2.1]The Accused committed the crime with intent

The attack was launched consciously and with intent, i.e., with the mind on the act and its consequences, and willing them (‘criminal intent’ or ‘malice aforethought’);²¹⁶ There was no refrain shown in attacking objects where the presence of civilians and children was a known fact.²¹⁷ Existence of intent and knowledge can be inferred from relevant facts and

²¹⁰ Kordic, Trial Chamber, ¶322.

²¹¹ Ambos Kai (ed.), Rome Statute of the International Criminal Court, Article-by-Article Commentary (4th edn., Beck/Hart/Nomos, 2021) 3008 [“Ambos”].

²¹² Translation: ‘An act does not make a person guilty of a crime, unless the person’s mind be also guilty’.

²¹³ Ambos, K., *Treatise On International Criminal Law* (OUP 2014) 93-95.

²¹⁴ Ambos, pp. 910.

²¹⁵ *Id.*

²¹⁶ ICJ, Nuclear Weapons Case, ¶78.

²¹⁷ Compromis, ¶21.

circumstances²¹⁸. Attack was launched recklessly as it was expected to cause civilian casualties.²¹⁹ There was an acceptance of the possibility of huge casualties as was warned by a person from meeting to which the Accused did not take any precautions rather ignored the warning.²²⁰

Intent has been specifically defined in paragraph 2 of Art. 30²²¹. The mens rea requirement is met if it has been shown that the acts of violence which constitute this crime were wilfully directed against civilians, that is, either deliberately against them or through recklessness. The Appeals Chamber considers that this definition encompasses both the notions of “direct intent” and “indirect intent” mentioned by the Trial Chamber, and referred to by Strugar, as the mens rea element of an attack against civilians.²²² The VLR contends that the accused meant to engage in the conduct which can be construed from a number of factors.

Victor Yanakovich took advantage of the armed conflict, worked in close association with the OFC²²³ and ruined the lives of the Targarian community²²⁴ for his personal gains in order to increase his market capitalization all over the world²²⁵. The non-international armed conflict against the Targarians “allowed 3MZ, and Victor Yanakovich, to gain direct financial benefits”,²²⁶ which were “exchanged on the promise that 3MZ will continue to provide high-quality spare parts used to make and assemble the drones used in Project Hawk”²²⁷.

[D.2.2]The Accused committed the crime with knowledge

VLR submits that the Accused was ‘aware that the consequence will occur in the ordinary course of events’²²⁸. The standard of occurrence is not absolute certainty and is ‘near

²¹⁸ EOC, General Introduction, ¶3; *see also* Bemba (PTC II Decision), note 19, ¶137.

²¹⁹ Compromis, ¶21.

²²⁰ *Id.*

²²¹ Rome Statute, Art.30(2).

²²² Galić, Appeals Chamber, ¶140, Galić, Trial Judgement, ¶54.

²²³ Compromis, ¶¶20 & 9.

²²⁴ Compromis, ¶28.

²²⁵ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 19, Defence Witness-1 at pp. 21, Prosecutor Witness-1 at pp. 16.

²²⁶ Compromis, Annex-II- Ground Report | Truth Commission of Titan, pp. 31.

²²⁷ *Id.*

²²⁸ Lubanga, Trial Chamber ¶351; Katanga, Trial Chamber, ¶530.

certainty’.²²⁹ In this context, the ‘violation element decreases substantially and is overridden by the cognitive element i.e. the awareness that his or her acts or omissions “will” cause the undesired proscribed consequence’²³⁰. The general norm consisting of knowledge as a component of the mental element must be read with an eye to Art.32 of the Statute, which governs the defense of mistake which is absent in the present matter.

The Accused being a specialist in the field of weaponization of artificial intelligence²³¹ was fully aware about the consequences of the drone strikes. The drone attack on a populated school area is meant to cause chaos. Accused was also warned by two army officers about the physical classes being conducted in the Holy Cross School which he dismissed as irrelevant²³².

Victor, an expert in the field of weaponization²³³, used lethal autonomous drones for the planned attack²³⁴ by breaching the internal protocol²³⁵. He had also spent 1.5 years in the US to learn active warfare using drone technology²³⁶ which clearly indicates that Victor was highly eligible and qualified to understand the consequences of using such highly lethal weapons. Victor had absolute control over the drones²³⁷ which were used to the attack and he could have easily called off the attack within 7 seconds which was provided to suspend the ‘kill’ command²³⁸ as he had the training of making decisions that can adversely impact human life within 3-4 seconds of first sighting potential collateral damage²³⁹. Moreover, “in present time technology has not reached a stage where a drone can operate without any human control”²⁴⁰. It would need assistance and inputs from the operator and the final authority lies on the operator which is Victor in the present matter.

²²⁹ Katanga, Appeals Chamber, ¶776.

²³⁰ Bemba Gombo, ¶359.

²³¹ Compromis, ¶8.

²³² Compromis, ¶20.

²³³ Compromis, ¶8.

²³⁴ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 17.

²³⁵ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 18.

²³⁶ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 16.

²³⁷ Compromis, Witness Testimonials, Prosecutor Witness-1 at pp. 15.

²³⁸ Compromis, Witness Testimonials, Prosecutor Witness-2 at pp. 18.

²³⁹ Compromis, Witness Testimonials, Victim Witness-1 at pp. 24.

²⁴⁰ Compromis, Witness Testimonials, Victim Witness-1 at pp. 26.

PRAYER

Wherefore, in the light of the issues raised, arguments on merits, evidences supplied and authorities relied on, it is humbly prayed that:

- I. Victims of war crime of murder are entitled to certain rights under international law.
- II. Victor Yanakovich should be prosecuted for commission of war crime of murder covered under art. 8 of Rome Statute in country titan.
- III. Victor Yanakovich should be prosecuted for commission of grave breaches of international humanitarian law under geneva conventions and its additional protocols.
- IV. Victor Yanakovich should be held accountable for committing the war crime of murder.

COUNSEL FOR THE VICTIMS

Legal Representative of the Victims