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THE POWER OF HUMANITY

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Moot Problem

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A. INSTRUCTIONS

Proceedings

The hearing takes place in the jurisdiction of the International Criminal Court (“ICC”) at the “*confirmation of charges*” stage pursuant to Article 61 of the *1998 Rome Statute of the ICC* (“ICC Statute”). At this stage, the Prosecutor must “*support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged.*” The Accused may “*object to the charges*” and “*challenge the evidence presented by the Prosecutor*”.

Facts and evidence

The case is entirely fictional. The Statement of Agreed Facts includes all the facts supported by evidence that have been transmitted to the Defence, as well as facts and evidence presented by the Defence. Teams should confine themselves to the facts supplied. Neither the Prosecutor nor the Defence may introduce new evidence or facts at the hearing (Article 61(6)(c) of the ICC Statute is not applicable). Teams may nonetheless draw reasonable inferences from the facts. They may also question the credibility or weight of the evidence.

Procedure

The problem is not intended to raise questions of procedure other than the rights of the accused pursuant to Articles 66 and 67 of the ICC Statute. Any other procedural questions should be ignored.

Jurisdiction and admissibility

Counsel may, if relevant, address issues of conflict classification. Any other issues of jurisdiction and admissibility should be ignored.

Applicable law

In accordance with Article 21 of the ICC Statute:

“The Court shall apply

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

b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict”

B. INDICATIVE AUTHORITIES AND RESEARCH MATERIAL

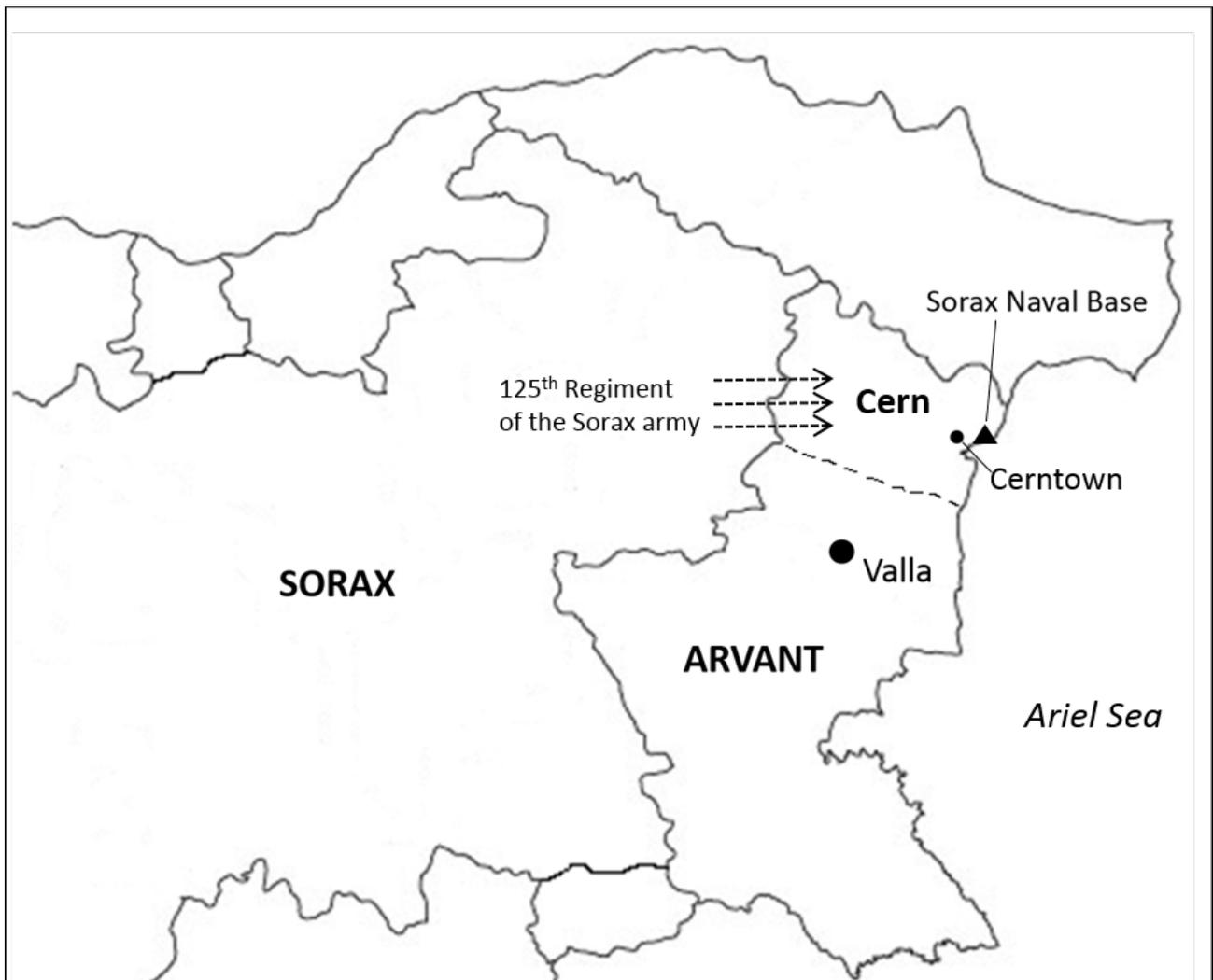
Indicative Authorities

- *Rome Statute of the International Criminal Court (1998)*
- *Elements of Crimes under the Rome Statute*
- *United States of America v Karl Brandt, et al*, IMT, Judgment (1947), especially the section headed “Permissible Medical Experiments”
- *Prosecutor v Martić*, ICTY, Trial Judgment, IT-96-11-T (2007, especially [66] ff and [441])
- *Prosecutor v Gotovina*, ICTY, Appeals Judgment, IT-06-90-A (2012), especially [49] ff
- *Prosecutor v Lubanga*, ICC, Confirmation of Charges, ICC, ICC-01/04-01/06-803 (2007), especially [350] ff
- *Prosecutor v Lubanga*, ICC, Appeals Judgment, ICC-01/04-01/06-3121-Red (2014), especially [459] ff

Guides to Research

- Knut Dörmann, *Commentaries on Elements of War Crimes under the Rome Statute of the International Criminal Court* (2003)
- *Case Matrix Network*, <https://www.casematrixnetwork.org/case-m/klamberg-commentary/rome-statute/>
- ICRC, *IHL Database*, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>

C. MAP



D. STATEMENT OF AGREED FACTS

1. The State of Arvant is a coastal country which lies west of the Ariel Sea and borders the land-locked State of Sorax to its west. Arvant has a population of 12 million, concentrated in the capital, Valla, and the nearby port-city of Cerntown. The territory of Sorax is five-times as large as that of Arvant and has a population of 60 million.
2. The port-city of Cerntown is located within the semi-autonomous administrative region of Cern, which has its own regional parliament, government and police force. Since 2000, there have been sporadic protests by groups advocating for the full independence of Cern. From time to time there have been clashes between protestors and the Cern police.

3. Cern has traditionally had cultural and strategic ties with Sorax. Just over 60 percent of the population of Cern have Sorax heritage. Cern is home to Sorax's only Naval base, which is located to the east of the centre of Cern on land controlled by Sorax under a 100-year lease. Sorax has a right of overland access into and out of its naval base.
4. On 25 March 2016, Ms Mallory Wright, the leader of the United Cern Independence Party, was elected as the Chief Administrator of Cern. Later that day, Ms Wright gave a speech in the Cern Parliament in which she stated, *"The time has come for Cern to break away from Arvant and to form an independent State. We know that the international community, including our friends in Sorax, will support us."*
5. The next morning, in a public statement published in the national media, the Prime Minister of Arvant, Sophie Atwood, stated, *"Cern is and always will be a part of Arvant. I have ordered our national police and military forces to be on standby to ensure that Arvant remains one country."*
6. On 27 March 2016, two Sorax military aircraft entered Arvant's airspace and flew over Sorax's naval base before heading east towards the Ariel Sea. Prime Minister Atwood responded in a speech to the national Parliament stating, *"This incident is a violation of our national airspace. While we have exercised restraint in the face of this provocation, we will do whatever is necessary to protect our borders."*
7. On 25 April 2016, Prime Minister Atwood issued an executive order dissolving Cern's Parliament. She mobilised Arvant's armed forces to begin taking up strategic positions in and around Cerntown, including bridges, important buildings, and major roads.
8. On 10 May 2016, Sorax ground forces began massing at the Arvant border. On the night of 14 May 2016, the 125th Regiment of the Sorax army, under the command of Commander Vincent Nev, crossed the border with Arvant, entering into Cern. The 125th Regiment met no resistance from Cern locals and they rapidly progressed through Cern towards the coast. There were sporadic skirmishes between the 125th Regiment and Arvant forces, but it appeared that Arvant was withdrawing their forces into Cerntown.
9. The next day, a Sorax spokesperson stated, *"Sorax felt it necessary to deploy its forces into Arvant to protect the civilian population and to protect our strategic interests."* Prime

Minister Atwood responded via social media saying, *“We will make Cerntown a stronghold against Sorax aggression.”*

10. By 22 May 2016, the 125th Regiment was approaching the outskirts of Cerntown. Artillery elements of the 125th Regiment took up position on a hillside 10 kilometres outside the city and 18 kilometres from the city centre. The 125th Regiment’s mechanised infantry entered Cerntown. Intense combat soon broke out, with Arvant forces using their knowledge of Cerntown’s streets and buildings to engage in hit and run tactics against the 125th Regiment. The fighting caused significant damage to infrastructure, and injury and loss of life to civilians.
11. On 23 May 2016, the International Committee for the Red Cross issued a press release calling attention to the deadly effect of the conflict on civilians in Cerntown. The press release stated, *“International humanitarian law applies in situations of urban conflict just as it does in conflicts carried on elsewhere”* and emphasised that *“indiscriminate attacks which strike civilians and military objects without distinction are war crimes tantamount to intentionally directing attacks against the civilian population.”*
12. On 1 July 2016, Sorax intelligence analysts, working from images taken by a Sorax drone, identified what appeared to be a group of between 15 and 20 Arvant soldiers taking up positions in a partially damaged office building in a densely populated area in the city centre. The office building was located opposite the main hospital of Cerntown, where many of the casualties from the conflict were being treated. Commander Nev sent a message to the 125th Regiment stating, *“Take immediate action to stop Arvant troops establishing a defensive position in the city centre.”*
13. Later that day, the 125th regiment launched brief artillery strikes that hit the main roads leading into and out of the city centre. Images from Sorax drones showed the attacks caused craters and debris which made it difficult for vehicles to use the roads. There was some limited damage to buildings on either side of the roads but no casualties were reported.
14. On 2 July 2016, Sorax ground forces reported to Commander Nev that they had observed no further movement of Arvant troops into the city centre. They reported the office

building provided Arvant troops with effective cover and afforded lines of fire on the main approaches. They requested targeted air strikes before advancing.

15. On 5 July 2016, Commander Nev sent a further communication to the 125th Regiment stating, *"You must clear the city centre. It's critical we push through to our naval base where we can re-group and establish control of Cerntown. Do not delay. The 125th has the capability to destroy buildings providing cover to hostiles."*
16. At 21:30 the same day, Sorax cyber forces hacked local telecommunications systems and sent SMS messages to all mobile phones in proximity to the city centre. The text read: *"Impending attack. Civilians should leave the city centre immediately or risk being injured."* Shortly before 23:00, Sorax artillery commenced the first of three barrages of artillery fire. Sorax ground forces then advanced and secured the area without suffering casualties. They reported that there had been damage to several buildings in the city centre and that the office building was destroyed but rubble and debris made confirmation of enemy casualties impossible.
17. Artillery shells also struck the hospital, damaging one of the wards and starting a fire that burned for several hours. Around 50 patients had been unable to evacuate before the strike, and some hospital staff had chosen to stay behind to care for them. In an interview with local media one of the doctors said, *"Shells were falling all around the hospital"*. Seven patients and three doctors were killed by a collapsed roof. Six patients, who were Arvant nationals and residents of Cerntown, suffered life-threatening burns to their skin and lungs. They were taken to a Sorax field hospital for emergency first aid by Sorax military doctors.
18. By 7 July 2016, members of Sorax's 125th Regiment had taken control of the city centre after overcoming light resistance from Arvant forces. On 8 July 2016, members of the 125th Regiment reached the naval base. Skirmishes between Sorax and Arvant forces continued throughout the city and in other parts of Cern.
19. By 8 July 2016, two of the Arvant patients burned in the hospital fire had died of their wounds, and Sorax military doctors, having provided emergency treatment, decided to transfer the other four Arvant patients to a specialist burns clinic located in Cerntown, which was run by Mantis, an international private medical company.

20. The Chief Executive Officer of Mantis, and the clinic's Chief Clinician, was a Cern resident named Dr Norman Gregory. Dr Gregory examined the Arvant patients upon admission. His notes recorded that the patients were barely responsive and that he directed his staff to place them in the clinic's critical care unit, where Sorax naval personnel were also receiving treatment for burns. He assigned his most senior doctor to oversee their treatment. After a brief discussion, Dr Gregory and the senior doctor agreed that the injuries to the four Arvant patients were so severe that they needed to be placed in medically induced comas and put on mechanical ventilation. Dr Gregory asked the senior doctor whether he thought the new Sylectin treatment should be administered, but the senior doctor replied that it was necessary to monitor the patients first.
21. As well as operating the burns clinic, Mantis operates a research laboratory where it develops new treatments for fire and smoke related injuries. In 2015, Mantis was contracted by the Sorax Navy to develop a drug designed to stimulate cell development to improve recovery from burns and promote skin regrowth.
22. The drug, Sylectin, was extensively trialled on lab mice, with the result that around 60 percent of mice showed improvements in their condition. A side effect was an increased tendency for blood clotting with serious complications caused to 15 percent of mice. In Dr Gregory's notes he wrote, *"I expect less significant side effects on humans based on known effects of drugs with similar compounds."*
23. In early 2016, the Sorax navy had agreed to limited tests of the drug on humans. All service personnel stationed at Sorax's naval base in Cerntown signed a waiver consenting to receive Sylectin if deemed medically necessary to treat injuries.
24. On 10 July 2016, Dr Gregory asked the senior doctor about the condition of the patients in the critical care unit. The senior doctor informed him that two of the Arvant patients had stabilised but all remained ventilated and in medically induced comas. Dr Gregory told the supervising doctor to administer Sylectin. The senior doctor disagreed, stating that he thought it was too early to consider untested treatment. Dr Gregory replied that Sylectin was not untested and that in his clinical judgment the extreme injuries made it necessary. The senior doctor's notes from later that day record, *"After careful*

consideration I instructed the critical care team to begin treating four civilians and two Sorax naval personnel with Sylectin.”

25. Over the next month, the two Arvant patients who had stabilised prior to receiving Sylectin recovered and began to show new skin growth on wounded areas. The other two Arvant patients and the two Sorax naval personnel died. Autopsies showed signs of blood clotting in each of the deceased. The reports signed by Dr Gregory listed the cause of death as “*multi-organ failure*” in each case. Experts agree that this is a common cause of death for victims of severe burns. Dr Gregory provided periodic updates on the progress of the treatment to the Sorax military doctors who had brought the civilians to the clinic, as well as to the Sorax navy.
26. After they were discharged, in October and December 2016 respectively, the two surviving Arvant patients were taken to medical facilities on the Sorax naval base for further rehabilitation. While there, one of them suffered severe chronic blood clotting in her left leg, which needed to be amputated below the knee. They were both eventually discharged and returned to their homes in Cerntown.
27. On 30 August 2016, Prime Minister Atwood sent word to Sorax requesting a ceasefire and cessation of hostilities. Both parties requested that the UN send peacekeepers to monitor the ceasefire.
28. As a result of the conflict, the Arvant’s police and courts were lacking in resources. Consequently, on 9 December 2016, Arvant referred the situation in its territory to the International Criminal Court (ICC).
29. On 2 March 2017, the Office of the Prosecutor initiated an investigation into the situation in Arvant.
30. On 10 November 2017, the Pre-Trial Chamber issued a warrant for Commander Nev and Dr Gregory’s arrest. Both of the accused were taken into custody in late December and transferred to the ICC Detention Centre in the Hague, Netherlands.
31. The Pre-trial Chamber now holds a hearing pursuant to Article 61 of the ICC Statute to confirm the charges on which the Prosecutor intends to seek trial.

32. At all relevant times, Arvant and Sorax were parties to the following treaties:

- a. 1949 Geneva Conventions;
- b. 1969 Vienna Convention on the Law of Treaties;
- c. 1977 Additional Protocols I and II; and
- d. 1998 ICC Statute (including any amendments thereto).

E. CHARGES

Vincent Nev

With respect to indiscriminate artillery attacks launched on 5 July 2016, Vincent Nev is criminally responsible for ordering, under Article 25(3)(b) of the ICC Statute, the crime of intentionally directing attacks against the civilian population as such not taking direct part in hostilities, punishable under Article 8(2)(b)(i) of the ICC Statute.

Norman Gregory

With respect to medical treatment administered to Arvant civilians from 10 July 2016 to on or around 10 August 2016, Norman Gregory is criminally responsible for committing through other persons, under Article 25(3)(a) of the ICC Statute, the crime of subjecting persons who are in the power of an adverse party to medical or scientific experiments of any kind which are neither justified by the medical or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such persons, punishable under Article 8(2)(b)(x) of the ICC Statute.