2024 FIAE INTERNATIONAL HUMANITARIAN LAW MOOT COURT COMPETITION

Organised by Firdaous Initiative for Academic Excellence (FIAE)

In Partnership with

Ahmadu Bello University (ABU) Zaria

THE SITUATION IN AZANIA

(Prosecutor V General Rahama)

BENCH MEMORIAL (CONFIDENTIAL)

* Any similarities between the names in this moot problem and real people or characters are completely coincidental.

* This bench memorial was prepared by Mr. Swaleh Hemed Wengo and Mr. Edward Millet (Authors of the 2024 FIAE International Humanitarian Law Moot Court Competition problem) Mr. Swaleh Wengo is a Law Lecturer at Prince Sultan University with specialisation on Public international Law, International Humanitarian Law, Human Rights and International Criminal Law as well the Assistant Director of programs at FIAE. Mr. Edward Millett is a Legal Advisor of Ministry of Justice of the UK Government on matters of international, public and constitutional law, human rights, judicial reform and the rule of law - including policy advisory work, legislative development and public law litigation. Appreciation goes to the Executive Committee of FIAE who immensely contributed to the organisation of the moot competition.

BACKGROUND

The judges of the 2024 FIAE Moot Court problem are given a description of the facts and legal concerns in this Bench Memorial: It is "Prosecutor v. General Rahama." Please read the problem, which is fictitious and based on a Pre-Trial Chamber confirmation of charges case, in combination with this Bench Memorandum. The issue was purposefully balanced so that all sides would have sufficient data to support compelling arguments. This Memorandum does not cover all of the legal points brought up by the situation. Judges may thus see and hear arguments that are not included in this Memorandum in briefs and oral arguments. Judges shouldn't automatically conclude that an argument is invalid or irrelevant just because it isn't mentioned in this memorandum.

Participants are split into two groups for this year's competition: (1) Counsel for the Defendant, General Rahama, who is accused of committing war crimes; and (2) Counsel for the Office of the Prosecutor, which is requesting that the Pre-Trial Chamber Confirm Charges. Each team will create a Brief for each position in line with the competition's rules, outlining its legal defenses in light of the Pre-Trial Chamber's Confirmation of Charges.

The Pretrial Chamber is requesting responses from all parties and participants on the following points in response to Pre-Trial Chamber agenda for the Confirmation of Charges:

1. Whether the ACJHPR has jurisdiction, and the case against General Rahama is admissible.
2. Whether there are substantial grounds to believe that the following war crimes pursuant to Article 28D of the Malabo Protocol were committed in Azania.
    a. In regard to the attack on Azania Military Installation on December 23, 2020 in Daura that Killed Dauran farmers:

       War Crime of Intentionally Directing an Attack in the knowledge that such an attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated Contrary to Article 28D of Malabo Protocol.
    b. In regard to the use of cluster munition that caused the death of the children and the destruction of the mosque:

War Crime of Employing Weapons, projectiles and materials and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering, or which are inherently indiscriminate Contrary to Article 28D of Malabo Protocol.

c. In regard to the cyber-attack made on Francisco Integrated Services (FIS) Servers: War Crime of Intentionally directing attacks against civilian objects, that is, objects which are not military objectives Contrary to Article 28D of Malabo Protocol.

3. Whether there are substantial grounds to believe that General Rahama is individually criminally responsible under Article 46B of the Malabo Protocol with regards to the above offences.

BRIEF FACTS

Azania, a federated state in the continent of Lazima, is composed of 24 states, each with its own devolved responsibilities. The Bantu region takes pride in its history and unique culture. Bantu contributes the most to Azania's development and economic prosperity, especially after the discovery of diamonds in 1994. General Rahama, the State Governor of Bantu, has invested heavily in new weapons utilizing artificial intelligence, with a reputation for his military capabilities. Bantu's trading ally is the neighboring State of Changamire, led by General Zuwa. The relationship between Bantu and Changamire has deep roots, dating back to General Rahama's time at the military academy in Changamire through an exchange program. There are accounts suggesting that General Zuwa assisted General Rahama's rise to power, contributing financially to her political campaign.

Azania and Changamire are both UN Member States and Permanent Members of the UN Security Council, as well as members of the African Union (AU) and State Parties to the Four Geneva Conventions. Azania and Changamire have differing ratification dates for various protocols and conventions, particularly related to international humanitarian law.

During the 2020 national elections in Azania, Bantu's representative, Fahari, contested against the candidate from the region of Daura. After a fiercely contested campaign, Fahari emerged as the winner, but the results were disputed by Bantu, alleging voter manipulation through bribery and hacking of voting machines.

In response, General Rahama threatened secession unless the issue was resolved. The Federal Election Commission found no unauthorized access to the voting system, and Fahari was inaugurated as president. General Rahama then declared Bantu's autonomy, leading to tensions between Bantu and Azania. The situation escalated when Bantu declared independence, with Changamire recognizing Bantu as a sovereign state.

Tensions increased, and General Rahama ordered the Bantu military to control the border with the neighboring Daura region. President Fahari responded by deploying Azanian federal troops to counter Bantu's measures. Aerial bombing raids were carried out by Bantu forces, leading to casualties among Dauran farmers and civilians.

In response, President Fahari surged additional troops to the frontlines. General Rahama sought assistance from General Zuwa, who directed him to General Vuta, a top military officer leading a private military company called Tahadhari Group. General Rahama contracted two regiments of troops from Tahadhari Group to support the fighting against Azania's armed forces. Tahadhari Group launched an offensive against Azania's military, using cluster munitions that resulted in civilian casualties. This prompted strong condemnation from the African Union Peace and Security Council, but no resolution from the UN Security Council due to Changamire's veto. President Fahari presented evidence of the use of autonomous weapons, leading to further international scrutiny.

Bantu's army conducted cyber operations targeting Azania's critical infrastructure, causing disruptions in medical facilities and the financial sector. This resulted in casualties and economic turmoil in Daura.

In response, President Fahari brought the matter before the African Union, which directed the case to the prosecution team at the African Court of Justice and Human and Peoples' Rights (ACJHPR). General Rahama was subsequently arrested and faces charges related to war crimes committed in Daura, including the deliberate attack on civilians and the use of cluster munitions.

SOURCES OF INTERNATIONAL LAW

For judges who might not have prior professional experience or education in this highly specialized field of law, this part serves as an introduction to the International Criminal Law and the fundamentals of public international law. If you have already served as a judge for an international

law moot court competition or believe you are well-versed in the general rules of international law that apply to the African Court of Justice and Human & Peoples' Rights (ACJHPR), feel free to jump forward to the next part. There are significant differences between home legal systems and international law. The strict description of the types of legal sources that are permitted before the Court is the most important for the international law moot judge.

General

The Malabo Protocol and The African Charter on Human and peoples' Rights must be used by the ACJHPR before applying any other laws. Second, "applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict," are among the things the Court may take into account. In the event that this is unsuccessful, the Court may take into account "where appropriate, general principles of law derived by the Court from national laws of legal systems of the world." The case law of other international criminal tribunals, such as the Nuremberg Tribunal, the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Special Tribunal for Lebanon (STL), and the International Residual Mechanism (IRMCT), may be consulted by the ACJHPR in determining custom and general principles. Its applicable laws must be interpreted in a way that respects universally acknowledged human rights.

A strict approach to interpretation can be borrowed from other International Criminal courts and tribunals statutes such as the Rome Statute which outlines in Article 22, that "the definition of a crime will be strictly defined and shall not be enlarged by analogy. Any ambiguity in the definition must be interpreted in favor of the person who is being looked into, charged with, or found guilty.

Treaties

Treaties are agreements made between and among States that bind the parties to act in accordance with the terms of the agreement or refrain from doing. The 1959 Vienna Convention on the Law of Treaties (the "VCLT"), whose main articles are acknowledged as embodying customary international law, defines the rules governing treaty procedure and interpretation.

Pacta sunt servanda is the fundamental rule governing treaties, and it is reaffirmed in Article 26 of the VCLT: "Every treaty in force is binding upon the parties to it and must be performed by

them in good faith." In other words, once a State ratifies a treaty, it is obligated to abide by it. According to Article 27 of the VCLT, a State is not permitted to use its Constitution, home laws, or domestic court cases as a justification for failing to uphold a treaty duty.

A treaty is generally not binding on a State that is not a party to it, and it does not confer any rights or responsibilities on such a State, according to Article 34 of the VCLT. This rule applies in this situation.

Customary International Law

Customary international law is the second source of international law. A rule of customary international law is one that the community of States treats and regards as a rule of law, regardless of whether it has been codified in a treaty. A rule of customary international law, in contrast to treaty law, is enforceable even if a State has not explicitly agreed to it. The only situation in which this does not apply is when a State "persistently objects" to the norm and is therefore not subject to its requirements.

The two criteria of *opinio juris*—a sense of legal responsibility or a shared opinion that recurring State activity is the outcome of a mandatory rule—and widespread State practice must both be proven in order to establish that a particular rule has become a norm of customary international law.

The key component of customary international law is "state practice," which is defined as when a sufficient number of States act in a way that is compatible with the customary standard. When a sufficient number of States sign, ratify, and accede to a convention, state practice may be demonstrated. Some commentators debate whether "regional customary international law" can be created by the practices of a small number of States in a specific region or by the practices of States that are particularly impacted by an issue, such as space law or the law of the sea. This possibility appears to have been accepted by the International Court of Justice.

The psychological or subjective component of customary international law is known as *opinio juris*. It demands that the State's activity be motivated by a feeling of duty rather than just practical considerations. Or, to put it another way, *opinio juris* is "a State's conviction that it is following a particular practice as a matter of law and that, were it to depart from the practice, some form of sanction would, or ought to fall on it." By citing treaties, rulings of national and international

courts, national legislation, diplomatic correspondence, legal advice from national legal advisers, and the conduct of international organizations, customary international law is demonstrated. Any one of these things could be used to support State practice, opinio juris, or both.

General Principles of Law

According to Article 38(1)(c) of the ICJ Statute, the Court may take general legal principles into account as a third source of international law. The vast majority of domestic legal systems contain general principles of law as their guiding principles. Among these are the concepts of good faith, the toxic fruit of the poisonous tree, double jeopardy, and non-retroactivity. The Malabo Protocol codifies a number of fundamental ideas. Others might fill in any gaps.

STANDARD OF PROOF

This is a confirmation of charges hearing. At the confirmation of charges, the Pre-Trial Chamber need not be convinced beyond a reasonable doubt and the Prosecutor only needs to meet the threshold of substantial grounds to believe (*Prosecution v Mbarushimana* (AC-30/05/2012)-§47).

JURISDICTION

This is not a contentious issue; however, teams reserve the rights to challenge the court's jurisdiction. The facts do establish all the jurisdictional parameters are available. The subject matter jurisdiction: the crimes brought are within the court's jurisdiction, the territorial jurisdiction: the state of Azania ratified the Malabo protocol (Para. 5 of the facts) and temporal Jurisdiction: The Malabo Protocol came into force when Azania ratified together with 15 other member states (Para. 5 of the Facts). Considering the crimes are war crimes that are alleged to have been committed on the Azanian territory which is a party and committed when the Malabo protocol had already come into force. The court then has jurisdiction.

ADMISSIBILITY

The issue of admissibility requires two criterion: The issue of complementarity and the sufficient gravity requirement (Article 46H of the Malabo Protocol). This issue is not a contentious one but participants must establish the two criterion of admissibility before they proceed to the counts.

The complementarity issue:

This issue is not one that is crucial in this case. The facts are clear that General Rahama was not subjected to any criminal investigation by the State of Azania. Azania was not in a position to investigate or prosecute. (Paragraph 26 of Fact Sheet)

Regarding sufficiency of the gravity:

Pursuant to Art.46H(2)(D) of Malabo Protocol, the Court must be satisfied that there is sufficient gravity. This is similar to the ICC Criterion. Thus, both qualitative and quantitative criterion must be fulfilled (See 2009 ICC *Katanga* decision para. 59). Quantitative refers to the number of victims (See *Al Hassan* 2020 decision para 92). Qualitative refers to the nature, scale, manner, and resulting harm of the crimes (See the situation in Sudan, 2010 decision para 31, and situation in Georgia 2016 decision para. 51).

Prosecution

The prosecution will argue that the gravity requirement under Article 46H(2)(d) of the Malabo Protocol is clearly satisfied in this case, meeting both the quantitative and qualitative criteria established by jurisprudence from the International Criminal Court.

Regarding quantitative gravity based on the number of victims, the prosecution will point to the significant death toll arising from General Rahama's actions. The December 23, 2020 attack using hypersonic Kinzhal missiles on an Azanian military installation near Dauran grazing lands directly killed several civilian farmers. Moreover, the November 2, 2021 ransomware cyberattack that crippled operations at the Midona nuclear facility led to around 4,000 deaths from radioactive poisoning of the water supply in Daura, affecting both civilians and military personnel. With over 4,000 victims, the prosecution will assert that the quantitative threshold is unquestionably met.

Turning to qualitative gravity, the prosecution will emphasize several factors that demonstrate the grievous nature and severe impacts of the alleged crimes. First, the very nature of the acts - using indiscriminate weapons like cluster munitions and hypersonic missiles in areas with known civilian presence, as well as cyberattacks deliberately targeting civilian infrastructure - underscores their criminal character. Second, the massive scale, with effects spanning across multiple regions and critical civilian systems like hospitals and banking, shows these were not isolated incidents.

Third, the calculated and reckless manner of commission, intentionally deploying weapons sure to cause disproportionate civilian harm and targeting essentialcivilian services with cyberattacks, evinces complete disregard for fundamental humanitarian principles. Finally, the resulting widespread harm - civilian deaths, poisoning of water supplies, disruption of medical care leading to more deaths, and severe economic consequences from the banking system's paralysis - left a trail of catastrophic civilian suffering.

In light of the staggering quantitative toll and the undeniably grave qualitative factors, the prosecution will forcefully argue that this case clearly crosses the gravity threshold under Article 46H(2)(d) of the Malabo Protocol. Both the quantitative and qualitative requirements are overwhelmingly satisfied.

Defense

The defense may strongly contests the prosecution's assertions that this case meets the gravity threshold under Article 46H(2)(d) of the Malabo Protocol. Both the quantitative and qualitative aspects of gravity have been grossly overstated.

On the quantitative prong, the prosecution heavily inflates the death toll attributable to General Rahama. The 4,000 deaths from the Midona nuclear facility incident resulted from an unintended leak after a legitimate cyber mission to disable Azanian military capabilities. This was an unforeseen and unintended consequence, not an intentional massacre of civilians. The few civilian farmer deaths from the December 2020 missile strike, while profoundly regrettable, were isolated collateral damage. The prosecution cannot plausibly lump these disparate incidents together to artificially manufacture a large death count.

Moreover, the qualitative factors asserted by the prosecution are legally and factually flawed. The attacks were directed against legitimate military objectives using lawful weapons of war. The mere presence of potentially indiscriminate effects does not automatically render these attacks categorically criminal. Nor were civilian areas deliberately targeted - the tragic deaths were incidental civilian casualties, not intentional crimes against civilian populations.

The prosecution conflates violations of the principle of proportionality, which are subject to the reasonableness judgments of commanders, with malicious and intentional slaughter of civilians. Not every instance of collateral damage rises to the level of gravity required by this Court.

Additionally, the cyberattacks were directed at disabling military systems and logistics, not "deliberate attacks" against civilian objects as alleged. Collateral effects on banking systems and hospitals, while regrettable, were not the intended purpose and do not constitute grave crimes in this context of an armed conflict.

In terms of scale, this was a limited conflict between the military forces of Bantu and Azania, with effects largely contained within the border regions. It did not constitute a broad, systematic assault on the civilian population that could be considered grave enough for the admissibility before the court.

Teams may decide to address both of the two criterions for the purpose of determining whether both the criterion have been met or not. Focus should be made on the criterion of Gravity as it is the most relevant in the instance facts.

COUNTS

In order for teams to argue on whether there are substantial grounds that war crimes were committed, there is need for the teams to classify the conflict so that they determine which specific provisions they will rely on under Article 28D. Whether provisions of war crimes under International Armed Conflict (IAC) or provisions under Non-International Armed Conflict (NIAC).

CLASSIFICATION OF THE ARMED CONFLICT

Armed conflict can be classified as International Armed Conflict (IAC) or Non-International Armed Conflict (NIAC). Teams may classify the conflict in any of the two based on the facts.

1. **Does the Declaration of Independence by Bantu make the conflict IAC?**

Arguments for Internationalisation through the Declaration of Independence

The Teams may argue that the evidence establishes that the situation in Azania constituted an international armed conflict between Bantu, as a newly formed state, and Azania after Bantu's valid unilateral declaration of independence.

Under the constitutive theory of statehood derived from the Montevideo Convention, an entity qualifies as a state if it possesses: (1) a permanent population; (2) a defined territory; (3) a government; and (4) the capacity to enter into relations with other states.

Bantu clearly met these criteria after its declaration of independence on September 30, 2020, as it had a permanent population within its defined borders, an established government structure under General Rahama, and took steps to pursue recognition and entry into state relations by notifying the UN Secretary-General.

Crucially, Bantu received explicit recognition as a sovereign independent state from 14 UN member states according to Changamire's statement, including the support of 3 out of the 5 permanent members of the UN Security Council.

While universal recognition is not legally required, such express acknowledgment from multiple states, especially permanent UNSC members, provides strong evidence of Bantu's status as a state under the constitutive theory and customary international law.

Therefore, by the time the armed conflict between Bantu forces and Azania forces escalated in October 2021 with Tahadhari's offensive operations, the hostilities occurred between two sovereign states - Bantu and Azania. This meets the definition of an international armed conflict codified in Article 1 of Additional Protocol I.

As an IAC triggers the full application of international humanitarian law governing inter-state armed conflicts, the alleged crimes against General Rahama should be evaluated through this lens rather than the legal regime for non-international armed conflicts. This distinction is critical for assessing potential violations and criminal responsibility.

Rebuttal

On the other hand, it can be argued that while Bantu took steps towards independence, its putative "Declaration" did not actually effectuate statehood or provide a basis to categorize this as an international armed conflict triggering the law of IACs.

For new states to be considered legitimately created, there must be a complete dissolution of the prior state's sovereignty and control over that territory, transferred through processes recognized by international law. Bantu's unilateral actions did not legitimately accomplish this.

Azania never consented to or recognized Bantu's separation, maintaining it remained part of the sovereign Azanian state. The Azanian federal government explicitly rejected Bantu's declaration of independence as unconstitutional under domestic law. This internal constitutional dispute over devolution of power cannot unilaterally create a new state.

The alleged recognition from other UN members and UNSC permanent members is legally irrelevant. Recognizing formalities cannot override the bedrock principle of territorial integrity enshrined in the UN Charter.

As an existing UN member state, only Azania itself could consent to Bantu's secession and emergence as a new sovereign divorced of its territorial authority. No other states have the legal capacity to effectuate this over Azania's objections absent exceptional circumstances like prolonged subjugation or self-determination denied - neither of which apply to Bantu's relatively prosperous self-governance.

Furthermore, the Laws of Armed Conflict have a foundational principle of non-interference in states' internal affairs. How Azania chooses to govern and potentially quash separatist movements through force falls within the domestic jurisdiction reserved to sovereign states.

Absent transfer of sovereignty effectiveness, the conflict remains an internal non-international armed conflict (NIAC) between Azanian federal forces and Bantu separatist militia - not an inter-state IAC. The charges against Rahama should be properly assessed through NIAC regulations as the controlling legal framework regardless of Bantu's unauthorized separatist claims.

Even if Bantu validly attained statehood through its declaration of independence, it was not a party to the Geneva Conventions or Additional Protocols governing international armed conflicts between states. Only Azania was bound by these treaties as the pre-existing state party.

Under Article 3 common to the Geneva Conventions, legal classification of an armed conflict not of an international character applies to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties."

Since Bantu was not a "High Contracting Party" to the Conventions, the conflict occurred internally on Azanian territory between its armed forces and Bantu separatist militia. This situation precisely meets the definition of a NIAC.

The International Criminal Tribunal for the Former Yugoslavia has held that the intervening recognition of statehood does not alter the legal classification of conflicts from their inception as internal NIACs. The pivotal question is the status of the entities at the time hostilities commenced.

Therefore, regardless of Bantu's later purported statehood, the conflict should be properly categorized as a NIAC to which the more limited legal regime under Common Article 3 and customary laws apply rather than the full Geneva Conventions governing international conflicts.

Counter-Rebuttal

While Bantu may not have been a formal treaty party, it was still bound to comply with customary rules of international humanitarian law given their fundamental, universally accepted nature transcending written convention.

Numerous authoritative sources like the International Court of Justice and the International Committee of the Red Cross have affirmed that the core principles of IHL form customary international law binding on all parties to armed conflicts.

The ICRC's landmark Customary IHL study identified over 160 rules of customary law applicable in both international and non-international armed conflicts, including critical protections like the principles of distinction, proportionality, and prevention of superfluous injury.

Even if considered a NIAC, Bantu forces were obligated to abide by these customary rules given their crystallization reflecting the fundamental tenets of the laws of war pre-dating and underlying the Geneva Conventions. Non-treaty status cannot excuse manifest violations of these universally accepted humanitarian norms.

The International Criminal Tribunal for Rwanda has stressed that "the purpose of extending application of the core principles of IHL to internal armed conflicts is to protect the civilian population" as an inviolable mandate. Categorization as a NIAC matters little if the misconduct patently defies customary humanitarian protections.

Therefore, regardless of the conflict's technical legal classification, Bantu's duty to uphold foundational IHL principles as customary law remains - subjecting its forces to potential criminal culpability for any transgressions as serious violations equivalent to grave breaches in international conflicts.

2. **Does the Conflict Internationalise under Article 1(4) of AP1?**

Argument for Internationalizing under Article 1(4) AP1:

Bantu has a legitimate claim to invoke Article 1(4) of Additional Protocol I, which states the Geneva Conventions and API shall apply to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination."

The facts clearly demonstrate Bantu's struggle derives from being a historically occupied territory by the former Kingdom of Azania. Despite gaining self-governance, Bantu and its distinct ethnic Bantu people argue they have been continually subjugated and denied meaningful autonomy over their political, economic, social and cultural development within the Azanian federal structure.

This oppressive situation, where Bantu's vast economic contributions underpin an exploitative power dynamic, constitutes a form of "colonial domination" or "alien occupation" that deprived the Bantu of their self-determination rights under international law.

As such, Bantu's armed forces were engaged in a self-determination conflict covered by Article 1(4), internationalizing the legal character of the hostilities and triggering full application of the Geneva Conventions and Additional Protocol I as an inter-state conflict.

Rebuttal:

While Article 1(4) provides an avenue for national liberation movements to invoke application of IHL governing international conflicts, its scope is limited by Article 96(3)'s requirements.

Specifically, Article 96(3) conditions Article 1(4)'s applicability on the entity's "authority representing a people engaged against a High Contracting Party in an armed conflict" making an explicit unilateral declaration accepting the Geneva Conventions and API's competence.

Here, Bantu's purported declaration of statehood on September 30, 2020 occurred before Azania ratified Additional Protocol I on October 22, 2020, rendering Azania not a "High Contracting Party" to API at that time under the definition in Article 96(3).

General principles of treaty law in the Vienna Convention on Law of Treaties (VCLT) under Article 4, prevent retroactive application before a state's ratification barring explicit terms allowing

it. Azania's subsequent ratification cannot be projected retroactively to cover Bantu's prior declaration attempt.

Therefore, even if considered a self-determination conflict, the critical timing mismatch with Azania's ratification means Article 1(4) could not be properly invoked by Bantu under API's prescribed legal mechanism. The protections would not apply until Azania became a High Contracting Party, if at all based on the questionable validity of Bantu's unilateral declaration alone satisfying Article 96(3).

Counter-Rebuttal:

While the timing of formal ratification is problematic for invoking Article 1(4) at the declaration stage, a strong argument can be made that it became applicable once the armed conflict actually commenced.

The key is determining when the relevant "armed conflict" began between Bantu and Azanian forces. If this start date occurred after Azania's October 22, 2020 ratification of API, then Azania would qualify as a "High Contracting Party" under Article 96(3) for purposes of Article 1(4)'s application.

The first concrete armed engagement did not take place until December 23, 2020 when Bantu forces bombed the Azanian border region. By this time, Azania had already ratified API, seemingly permitting Bantu's self-determination struggle to properly invoke the internationalizing provisions of Article 1(4).

Applying rules of treaty interpretation, the purpose and context of Additional Protocol I indicate it should govern the entire situation of an armed conflict once triggered rather than using shifting legal frameworks based on the specific timing of engagements.

Therefore, while the declaration itself may have been premature, Bantu could legitimately activate Article 1(4)'s internationalizing mechanism for the armed conflict occurring after Azania's ratification, subjecting the parties to the full IHL regime for international conflicts.

3. **Does the involvement of Tahadhari Internationalised the conflict?**

For Internationalization:

There are strong grounds to argue that Tahadhari's substantial involvement in the Bantu-Azania conflict, operating under the overall control of Changamire, effectively internationalized the hostilities.

The "overall control" test established in the Tadic case by the International Criminal Tribunal for the Former Yugoslavia provides that an armed conflict can be internationalized if: 1) another state has a role in organizing, coordinating or planning the military actions of the armed group, and 2) the state is acting to assist the military activities of the armed group's operations.

The facts demonstrate that Changamire, through its military leadership and intelligence agency, played a pivotal role coordinating with and supporting Tahadhari's combat operations in Bantu. General Vuta, as a top Changamire military officer, traveled to Bantu to directly lead Tahadhari troops. Changamire provided weapons, ammunition, vehicles, supplies and access to training facilities for Tahadhari's offensive.

Furthermore, Changamire's provision of confidential intelligence demonstrates its involvement in planning and coordinating the specific strategic objectives and tactics employed by Tahadhari forces on the ground in Bantu.

This level of integrated organization, logistical support and operational alliance goes well beyond mere financial or auxiliary assistance. It establishes the "overall control" by Changamire over Tahadhari's military activities against Azanian forces that the Tadic test requires to internationalizing the conflict.

The International Court of Justice has endorsed applying the "overall control" standard for determining when external state involvement rises to the level of internationalizing a conflict in its Bosnian Genocide judgment. This approach is also supported by the ICRC's interpretive guidance.

Therefore, given Changamire's role effectuating overall control of Tahadhari's combat operations within Bantu, the conflict crossed the threshold of being a non-international armed conflict and should properly be classified as an international armed conflict engaging state responsibility for Changamire.

Against Internationalization:

While Changamire provided significant support to Tahadhari forces in the form of weapons, intelligence, training access and even leadership through General Vuta's personal involvement, this alone is insufficient to meet the high "overall control" test threshold for internationalization.

As clarified by the ICTY Appeals Chamber in later cases like Haradinaj, the "overall control" test sets an extremely high bar that is not satisfied by "evidence of external support, provisions of training or provisions of military intelligence alone." Rather, the control over the specific operations "must be constant, effective and exclusive" tantamount to a principal-agent relationship.

Here, the facts indicate Tahadhari remained its own autonomous force exercising independent decision-making over the planning and execution of specific missions and battlefield tactics without constant, exclusive instruction from Changamire. Providing munitions and intelligence may have enabled their operations, but not controlled them.

Critically, Tahadhari's forces derived their allegiance and took operational orders directly from General Vuta as Tahadhari's commander and president, not as a proxy of Changamire's military hierarchy despite Vuta's parallel role. This negates the principal-agent relationship required.

Furthermore, Tahadhari expressly contracted with and received its mandate, strategic objectives, and authorizations from the Bantu government as part of their bilateral military services agreement. While supported by Changamire, Tahadhari's chain of command flowed from Bantu.

The International Court of Justice has cautioned that the "overall control" test maintains a very high threshold precisely to prevent too expansive of application that blurs the distinction between international and non-international conflicts. Unless the level of external state influence structurally subsumes the group's operational independence on the ground, as was the case in Tadic with Bosnian Serb rebel forces, internationalization cannot be established.

Therefore, Changamire's support alone fell short of meeting the stringent "overall control" standard that would divest this conflict of its fundamentally internal, non-international character between Azanian federal forces and Bantuan separatist militia groups like Tahadhari.

COUNT 1: WAR CRIME OF INTENTIONALLY DIRECTING AN ATTACK IN THE KNOWLEDGE THAT SUCH AN ATTACK WILL CAUSE INCIDENTAL LOSS OF LIFE OR

INJURY TO CIVILIANS OR DAMAGE TO CIVILIAN OBJECTS OR WIDESPREAD, LONG-TERM AND SEVERE DAMAGE TO THE NATURAL ENVIRONMENT WHICH WOULD BE CLEARLY EXCESSIVE IN RELATION TO THE CONCRETE AND DIRECT OVERALL MILITARY ADVANTAGE ANTICIPATED CONTRARY TO ARTICLE 28D OF MALABO PROTOCOL.

IHL prohibits attacks that are likely 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" (API, arts. 51(5)(b) and 57(2)(a)(iii)). This prohibition, originally codified in Additional protocol I to the Geneva conventions, is now part of customary IHL (CIHL, rule 14). This principle is therefore binding on all States and parties to international and non-international armed conflicts.

This prohibition introduces the notion of "proportionality" that must be respected that Incidental civilian casualties or damages must be proportionate to the direct and concrete military advantages expected (API, arts. 51(5)(b), 57(2)(a)(ii) and (b)). If this proportionality requirement is not met, IHL considers the attack to be indiscriminate. The assessment of the discriminate and proportionate nature of an attack remains under the responsibility of military commanders. It requires the balancing of various criteria, such as the military nature of the target, the direct military advantage expected from the attack, and the level and risks of expected civilian casualties and damage (*Kupreškić, Judgment* , para. 524). The decisions taken by military commanders include the determination, on a case-by-case basis, of the legal and material criteria of each attack they authorise. The targeting decision will have to consider, inter alia, the information available to the decision maker, the urgency of the situation, and the damage that an erroneous decision is likely to cause to forces or to persons and goods protected against direct attack.

Similarly, In the case of attacks on military objectives causing damage to civilians, international law contains a general principle prescribing that reasonable care must be taken in attacking military objectives so that civilians are not needlessly injured through carelessness. This principle is the principle of precaution which has always been applied in conjunction with the principle of proportionality, whereby any incidental (and unintentional) damage to civilians must not be out of proportion to the direct military advantage gained by the military attack. Therefore, the two key issues of consideration is whether the attack on Azania Military Installation on December 23, 2020, in Daura that Killed Dauran farmers was (a) Proportionate to the Military advantage gained and (b) it respected the precautionary principle of attacks.

Prosecution

The prosecution will likely argue that under international humanitarian law (IHL), the principle of proportionality imposes duties on parties conducting attacks. Even when directed at military objectives, an attack may be unlawful if it causes indiscriminate or disproportionate civilian harm or damage to civilian objects. As affirmed by Judge Higgins in his separate opinion in the Nucleur test case that "the principle of proportionality, even if finding no specific mention, is reflected in many provisions of Additional Protocol I to the Geneva Conventions of 1949. Thus, even a legitimate target may not be attacked if the collateral civilian casualties would be disproportionate to the specific military gain from the attack" (*Legality of the Threat or Use of nuclear weapons, Advisory Opinion*, I.C.J. Reports 1996, paras. 41-44, p. 245 and, *Dissenting Opinion of Judge Higgins*, para. 20, p. 587).

While Bantu's attack targeted an Azanian military installation, which is a permissible objective under IHL, Bantu's armed forces were still required to conduct a proportionality assessment. The rule of proportionality requires balancing the expected military advantage against the foreseeable civilian harm, based on the information available to the commander at the time of the attack.

Evidence suggests the Azanian installation was only 500 meters from grazing lands habitually used by Dauran farmers. As the Bantu military commander, General Rahama had a duty to consider the possibility of civilian casualties among the farmers and damage to the grazing lands, and to determine whether such foreseeable harm would be excessive relative to the anticipated military advantage of striking the installation.

By using Kinzhal hypersonic missiles, which can have indiscriminate deadly effects in populated areas, in close proximity to civilian areas, Bantu's armed forces may have carried out an indiscriminate and disproportionate attack while being aware it could cause civilian harm and damage to civilian objects. The prosecution will likely contend that Bantu violated the principle of proportionality by failing to adequately weigh the foreseeable risk to civilians against the expected military gain, resulting in the unlawful deaths of Dauran farmers.

The prosecution may argue further, in any event even with the application of the proportionality test the military commander is required to apply the precautionary principle. In all cases, the commander must take precautions to avoid or limit the unintended effects of the attack on civilians and civilian objects. (API, arts. 57 and 58 and CIHL Rules 14 to 24). This means that commander must assess the risk of foreseeable civilian casualties and damages in the context of a given attack and before it, and take all precautions to avoid or at least minimise such civilian harm. The usage

of the Kinzhal hypersonic missiles was in no way an attack that took considerations on the precautionary principle. The attack was therefore expected to have effects on the civilians considering the distance between the military installation and the grazing areas is 500 metres. In the same vein, Azania was not in violation of IHL in establishing the military installation 500 metres from the grazing lands. While some practice refers to the duty to locate military bases and installations outside densely populated areas, practice in general limits this obligation to what is feasible. It is possible, as several reports on State practice point out, that demographic changes cause military bases to be located within or near cities where this was originally not the case. When such objectives involve immovable property, it is less feasible to move them than in the case of movable property. At the Diplomatic Conference leading to the adoption of the Additional Protocols, South Korea stated that this rule "does not constitute a restriction on a State's military installations on its own territory". Thus, the prosecution may argue the demographic of the Azania border with Bantu did not provide feasible measures to locate the military installation far from the grazing lands.

The prosecution may also try to develop arguments around the choice of weapon from the perspective of means and methods of warfare, arguing that on this basis too the attack is unlawful under IHL – and thus a breach of Art.28D(b)(xxi). The choice of Kinzhal hypersonic missiles is arguably a choice of means of warfare that could cause superfluous injury or unnecessary suffering (Art.35(2) API).

Defence

The defense may argue that to hold the accused liable under for this crime it is necessary to fulfill the elements of this crime which are: (i)The perpetrator launched an attack. (ii)The attack was such that it would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term, and severe damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.

On the first element the defense can argue that it is crucial to emphasize that intent in the context of launching an attack under this crime necessitates assessment of whether the accused 'intended to cause excessive harm to civilians or civilian objects. In *Martinović* case the ICTY emphasized that to establish intent, it must be shown that the accused had a specific aim to cause harm that goes beyond what is considered proportional and necessary for a military operation. Drawing parallel to the present case there

is no evidence to suggest that General Rahama specifically aimed to cause excessive harm to the Dauran Farmers or their grazing lands beyond proportionality rather it was aimed at Azanian Military Installation which was a 'militray object'. General Rahama was guided by the drone footage from the intelligence indicating that no farmers were within the area at the time of the attack, therefore, aspect of 'intentional harm beyond means of proportionality' remains unfulfilled.

The defense can also argue that the attack was not excessive to the military advantage gained: Bantu forces achieved discernible 'excessive' military advantage; IHL emphasised that the expected military advantage must be concrete and immediate, i.e., substantial and relatively short time rather than long term. Military advantages that are barely perceptible and those that would only appear in the long term should therefore be disregarded in the proportionality test. In military terms, the ICRC commentary to Protocol I as well as CIHL rule 14 emphasise that the proportionality rule must be assessed in relation to the tactical military advantage gained in securing each objective of a precise attack. When weighed against the concrete and direct military advantage anticipated: In the case of *Prosecutor v. Stanislav Galic*, it was held that "select an appropriate means of attack to minimize unintended harm and assess whether the attack, even, when necessary, would result in excessive harm to civilians or civilian objects compared to the expected military advantage ".

Likewise, General Rahama’s primary objective was to gain a military advantage as there was perceived threats posed by the Azanian Military Installation which prepared for a ground invasion on Bantu. Thus, the pre-emptive attack by Bantu was for the purpose of gaining military advantage of the Azanian forces. Even though the attack caused deaths to Dauran Farmers at the end, the proportionality test requires that commanders have a clear appraisal before the attack of the expected military advantage and of the related foreseeable civilian losses to decide if they are commensurate which General Rahama had due to the intelligence reports provided to him. As a result, civilians’ casualties that occurred during the attack, while satisfying the proportionality test, would be tantamount to intentional civilian deaths justified by military necessity. Indeed, they cannot be qualified as mistakes, and even if the death of such farmers is not the aim of the attack, it is a result that was anticipated, accepted, and inflicted by military commanders.

On the precautionary principle, the defense may argue, the presence or movement of the civilian population may not be used to render certain points or areas immune from military operations and, in particular, to protect military objectives from attack (API, art. 51(7)). The requirement of IHL in order to apply the precautionary principle is that military commanders to reach decisions concerning the taking of precautions against the effects of attack on the basis of their assessment of the information from all sources which is available to them at the relevant time. Considering at the relevant time General Rahama had information from the intelligence that there were no civilians within the area, the requirement to apply precautionary

principle does not arise. Similarly, there is an obligation on Azania, to the extent feasible, to remove civilian persons and objects under its control from the vicinity of military objectives is particularly relevant where military objectives cannot feasibly be separated from densely populated areas according to Rule 23 of CIHL. These obligations go hand in hand with the obligation to avoid locating military objectives within or near densely populated areas as set forth in Article 58(b) of Additional Protocol I. In that regard Azania was the one in violation of IHL by establishing a military installation 500 metres from the vicinity of civilians and civilians' objects.

COUNT 2: WAR CRIME OF EMPLOYING WEAPONS, PROJECTILES AND MATERIALS AND METHODS OF WARFARE WHICH ARE OF A NATURE TO CAUSE SUPERFLUOUS INJURY OR UNNECESSARY SUFFERING, OR WHICH ARE INHERENTLY INDISCRIMINATE

1. **Was the usage of cluster munition an indiscriminate weapon that can cause superfluous injury or unnecessary suffering?**

Prosecution

Regardless of whether the children or mosque could be considered legitimate military targets at the time, General Rahama's authorization of cluster munitions itself constituted an illegal means of warfare under international humanitarian law.

Cluster munitions are explicitly prohibited by the 2008 Convention on Cluster Munitions, which Azania has ratified. While Changamire has not joined this treaty, the convention represents the culmination of international efforts to ban weapons that pose grave dangers to civilians due to their indiscriminate area effects and ability to cause superfluous injury.

As indicated by the facts, cluster munitions are designed to disperse large numbers of bomblets or submunitions across a wide area. This very nature makes them inherently indiscriminate - they cannot be precisely targeted but will inevitably impact civilians and civilian objects in the vicinity. The discovery of unexploded bomblets littering residential areas of Daura after the attack underscores this indiscriminate effect.

Furthermore, the submunitions cause superfluous injury by design. Each bomblet detonates with such force that it produces grievous wounds and severe bodily damage beyond what is actually necessary to render a combatant incapacitated based on military necessity. The deaths of children demonstrate this gruesome, excessive impact.

International humanitarian law absolutely prohibits means and methods of warfare of an indiscriminate nature or that are of a nature to cause superfluous injury and unnecessary suffering, as codified in Article 35(2) of Additional Protocol I. The use of cluster munitions patently violates this fundamental IHL principle.

While some conventional weapons may potentially cause incidental civilian harm or unnecessary suffering if not properly employed, cluster munitions are uniquely problematic in that the superfluous injury and inability to discriminate is an inherent feature rather than misuse. No amount of mitigation or safeguards can negate their illegal nature.

So even if the prosecution cannot prove the children and mosque were illegitimate targets at that specific point, the very use of cluster munitions in this situation provides substantial grounds for the war crime charged under Article 28D of employing unlawful weapons contrary to IHL. Their indiscriminate area effects and gruesome capacity to cause superfluous harm violated treaty prohibitions Azania is bound to uphold.

Prosecution teams may also mention Protocol V to the Convention on Certain Conventional Weapons (the Protocol on Explosive Remnants of War), which is intended to reduce the post-conflict dangers to civilians from all forms of unexploded and abandoned explosive ordnance. This treaty provides a framework for the rapid clearance of these weapons, including cluster munitions, after the end of active hostilities. Among other things, it requires each party to an armed conflict to clear – or provide assistance for the clearance of – any failed or abandoned explosive munitions that result from its operations, and to rapidly make information on the types and locations of munitions used available to clearance agencies. However, the Protocol does not contain specific restrictions on the use of any weapon. It therefore does not address the wide area effects of cluster munitions at the time of use or the dangers for civilians caught in a cluster munition attack.

Defense

The prosecution is attempting to criminalize the use of lawful weapons of war based on emotional rhetoric rather than facts and applicable law. Cluster munitions are not prohibited under customary international law as binding on all parties to this conflict.

While the prosecution points to the 2008 Convention on Cluster Munitions as purportedly banning these weapons, Changamire has not ratified this treaty and is not bound by its provisions. As a sovereign nation, Changamire is fully within its rights to produce, transfer, and allow its military forces like Tahadhari to employ cluster munitions.

Furthermore, the Bantu state was not a party to the Convention at the time these events occurred. General Rahama cannot be prosecuted for authorizing weapons that were permissible under Bantu's laws of armed conflict during this period.

The core IHL treaties applicable here are the 1949 Geneva Conventions and their 1977 Additional Protocols, to which both Azania and Changamire are parties. Nowhere in these treaties is use of cluster munitions explicitly prohibited or deemed inherently indiscriminate.

The prosecution is conflating the principles of avoiding indiscriminate effects and prohibiting superfluous injury with an outright ban on specific munitions like clusters. In reality, the lawfulness depends on how they are employed, not their inherent nature.

According to the facts, Rahama supplied Tahadhari with a clear standard operating procedure (SOP) restricting cluster munition use only in areas clear of civilians and civilian objects after issuing 48-hour evacuation notices. Had these protocols been fully adhered to, there would be no issue.

Any failure in properly following the SOP would be a question of compliance with IHL, not the unlawfulness of the weapon itself. Means of warfare are not illegal simply because they have the potential for indiscriminate impact if preventative measures are disregarded.

The evidence suggests the tragic deaths resulted from the execution of the SOP and target identification - not due to the inherent unlawfulness of using cluster munitions in this armed conflict between Azania and Bantu forces. Before justly branding General Rahama a war criminal, the Court must carefully evaluate the full context in which these weapons were deployed against permissible military objectives while taking feasible precautions. Mere use of clusters does not inevitably constitute a war crime.

2. **Are the social media reports admissible evidence?**

Prosecution

The prosecution has compelling evidence that should be admitted against General Rahama for the alleged war crimes involving the use of cluster munitions in Daura. While General Vuta dismissed reports of the cluster munition attack as "fake news", verified drone footage presented by President Fahari on live television clearly showed the missile launch dispersing bomblets that killed the 5 children.

Considering the rules of procedure of the ACJHPR are yet to be drafted. We can borrow from other international criminal courts and tribunals.

Under Article 69(4) of the Rome Statute of the International Criminal Court, "The Court may rule on the relevance or admissibility of any evidence" based on the principle of ensuring a fair trial. The drone footage meets the standard of prima facie relevance and admissibility outlined in the ICC's Rules of Procedure and Evidence.

Rule 63(1) states that "all relevant evidence may be admissible." The drone video directly showing the cluster munition attack is highly relevant to proving the charge of employing indiscriminate weapons contrary to Article 28D of the Malabo Protocol.

Rule 63(2) outlines factors for assessing relevance, including the "value of the evidence" and the "prejudice that might be caused to a fair trial." The footage's probative value in documenting the attack is high, while any potential prejudice is outweighed by its importance as evidence of the alleged war crime.

Furthermore, Rule 63(9) allows admission of "evidence of reports...that were made at the time by...organizations acting in the course of their normal activities." The viral social media reports exposing the mosque destruction and child deaths should be admitted under this provision.

The drone video and contemporaneous social media reporting provide direct evidence that meets the ICC's standards of relevance, probative value, and reliability for admissibility. Coupled with other facts like the discovery of cluster munitions use and the children's possession ofweapons suggesting exposure to the attack, this evidence can establish substantial grounds that General Rahama authorized the unlawful cluster munition strike.

Defense

As the defense, I would rebut the prosecution's argument on the admissibility of the drone footage and social media reports as follows:

The drone footage and social media reports should be inadmissible as they lack the required indicia of reliability and authenticity under the ICC's rules of evidence.

While Rule 63(1) allows for admission of relevant evidence, Rule 63(9)(b) states that evidence obtained by means inconsistent with internationally recognized human rights shall not be admissible if "The violation casts substantial doubt on the reliability of the evidence."

The source and chain of custody of the drone footage is entirely unclear and unverified. There are no assurances that it was not digitally manipulated or edited to falsely implicate General Rahama and Tahadhari forces. Admitting such evidence of unknown origins would violate General Rahama's right to a fair trial.

Similarly, the social media reports are inherently unreliable. They emanate from unidentified sources on online platforms rife with misinformation. Rule 63(9)(a) requires evidence from "reports" to have been "made at the time by witnesses." Unsubstantiated social media posts do not meet this standard of contemporaneous reporting by actual witnesses.

Furthermore, under Rule 63(2), the potential prejudice of admitting this unverified digital evidence outweighs any probative value. Its admission could undermine the Court's truth-seeking function and integrity of the proceedings.

The defense does not dispute that cluster munitions were deployed resulting in tragic civilian casualties. However, the drone footage and social media posts are not the best evidence to prove these facts, as required by Rule 63(3). Official battle documentation, physical evidence from the scene, and testimony from soldiers and victims with first-hand knowledge would provide far more reliable evidence of the attack's circumstances.

Admitting the drone footage and social media reports would set a dangerous precedent, allowing parties to introduce any digital content without authentication. This low evidentiary bar fails to uphold the ICC's commitment to a fair and legitimate judicial process based on trusted, impartial evidence as prescribed in the Rules of Procedure and Evidence. The Court should exclude this unreliable digital evidence.

Defendant counsel may also mention the ICJ's emerging position on the admissibility of digital evidence, as seen in the *Ukraine v Russia* and *South Africa v Israel* cases. The ICJ expresses concern in its Practice Direction *IXquater* [here], which addresses audiovisual and photographic material. The Practice Direction states that such evidence must be accompanied by information such as its source, circumstances and date of its making, and the date when it was publicly available. The party must also specify, if applicable, the geographic coordinates where the material was produced.

3. **Were the children actively taking part in hostilities therefore becoming legitimate targets and the mosque becoming a legitimate target?**

Prosecution

Even if the drone footage and social media reports are deemed inadmissible evidence, the well-established facts clearly demonstrate that the cluster munition attack unlawfully targeted civilians and civilian objects in violation of core international humanitarian law principles.

President Fahari stated the children, approximately 14-15 years old, had only obtained rocket launchers at the mosque in an attempt to defend themselves against the Tahadhari forces' offensive. Merely possessing

weapons does not make these children legitimate military targets under IHL rules of distinction between civilians and combatants.

For a civilian to forfeit protection against direct attack, they must meet the criteria for actively participating in hostilities outlined in the ICRC's Interpretive Guidance. This requires 1) the act is likely to adversely affect military operations (threshold of harm), 2) there is a direct causal link between the act and resulting harm (direct causation), and 3) the act is specifically designed to support one party by causing harm to another (belligerent nexus).

Attempting defensive measures or exercising self-defense is excluded from the notion of direct participation under the Guidance. The children's conduct of obtaining rocket launchers only to protect themselves does not meet these criteria - there are no facts indicating their actions could adversely impact operations, directly caused harm, or aimed to support a party to the conflict's detriment of another. The children remained civilians not involved in hostilities.

Article 51(3) of Additional Protocol I explicitly prohibits attacks against civilians "unless and for such time as they take a direct part in hostilities." There is no evidence these children were doing more than attempting protection, which does not constitute taking an active part in combat that would deprive them of civilian immunity from direct targeting.

Furthermore, the mosque that was destroyed qualified as a civilian object which may not be directly attacked under Article 52 of Additional Protocol I, unless specific circumstances rendered it a military objective. No facts suggest the mosque lost its civilian character and protection due to military use.

By employing cluster munitions, an indiscriminate weapon that cannot precisely distinguish between military targets and civilian persons and objects, in a populated area with children not participating in hostilities and a house of worship, General Rahama and Tahadhari forces violated core IHL principles of distinction, proportionality, and precautions in attack.

Prosecuting counsel may also try to argue that DPH principles should be applied differently in the context of children. This might be expressed in terms of the continuing duty to take precautions in attack – e.g. could a less intrusive military measure have been used to achieve the military objective when attacking the mosque?

Defense

While the prosecution paints a sympathetic picture of defenseless children and a place of worship being caught in the crossfire, the facts do not support violations of IHL or war crimes occurred during legitimate military operations.

The children were not civilians merely "attempting protection" as claimed. President Fahari himself admitted they had obtained rocket launchers - offensive weapons - at the mosque. This goes beyond mere self-defense and constitutes direct participation in hostilities under the ICRC Guidance.

Obtaining and possessing offensive weapons like rocket launchers meets the first criteria of acts "likely to adversely affect the military operations" of Tahadhari forces. The children demonstrated a hostile intent to engage in the conflict and support Azanian forces to Tahadhari's detriment.

While their youth is lamentable, it does not preclude loss of civilian protections if actively participating as combatants. The commentary to Additional Protocol I is clear that "the young age of a person involved in the hostilities does not prevent the application" of targeting as an armed combatant.

As for the mosque, it had become a military objective and legitimate target based on its use and location. The ICRC Guidance recognizes civilian buildings can lose protection when used to support military operations, such as the children's possession of rockets transforming the mosque into a hostile base.

Many states including the USA have not accepted the ICRC Interpretive Guidance on DPH as an authoritative description of customary IHL (US DoD LOAC Manual, para.4.26).

Defense counsel may also mention the fact that the children – in hiding rocket launchers – at a religious site could amount to a breach of the prohibition on the use of human shields in Art.51(7) API (which is CIL in IACs and NIACs).

COUNT 3: WAR CRIME OF INTENTIONALLY DIRECTING ATTACKS AGAINST CIVILIAN OBJECTS, THAT IS, OBJECTS WHICH ARE NOT MILITARY OBJECTIVES

1. **Does Cyber-attack amount to an attack under IHL?**

Prosecution

The ransomware operation against the FIS server cluster clearly met the definition of a "cyber-attack" amounting to an "attack" under international humanitarian law principles.

The authoritative Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations defines a "cyber-attack" in Rule 92 as "a cyber-operation, whether offensive or defensive, that is reasonably expected to cause injury or death to persons or damage or destruction to objects."

The facts reveal the Bantu army's ransomware operation did cause damage and destruction to the FIS servers and data housed on them. It paralyzed operations at the Midona nuclear facility for weeks and disrupted the functioning of Daura's hospital and banking systems. This meets the definition of a "cyber-attack."

However, what's most critically relevant is whether this cyber-attack rose to the level of an "attack" regulated by IHL rules like the prohibition on targeting civilian objects – under Art.49 API.

Rule 94 of Tallinn Manual 2.0 states "A cyber-attack that causes...damage or destruction is an 'attack' as a matter of law." The official commentary explains "it is prohibited to conduct attacks against civilian objects, whatever the weapon system employed."

Given the FIS servers were a civilian computing facility with protected functions like hospital data, the ransomware operation causing damage and destruction to those components qualifies as an "attack" on civilian objects under IHL.

The Tallinn Manual's experts concurred with established case law that "attacks" under IHL applies to "any act of violence, regardless of the weapons employed." The means of cyber operations do not exempt it from IHL's regulations on attacks.

Furthermore, Rule 103 stipulates "Cyber-attacks against civilian cyber infrastructure constitute a violation of the prohibition of attacks against civilian objects." The FIS servers hosting civilian medical and financial data undoubtedly qualified as "civilian cyber infrastructure" under impermissible attack.

So not only was the Bantu ransomware operation an "attack" by definition, it blatantly violated IHL by intentionally offensively targeting civilian cyber infrastructure embedded in the FIS servers. This provides further grounds substantiating the alleged war crime under Article 28D of unlawfully attacking civilian objects.

Furthermore, academics have concluded that cyber-operations that are focused on affecting the integrity of systems data will amount to an attack under IHL [Geiss, Lahmann *Protection of Data in Armed Conflict*]. Given the operation at Midona resulted in a loss of system functionality for a period of time, it can be argued that it amounts to an attack that must comply with normal rules of IHL on distinction, proportionality and precautions.

Applying the IHL rules governing attacks, there are grounds to argue multiple violations occurred:
Distinction: The FIS server cluster was a "dual-use" object containing both military components related to the Midona nuclear facility as well as civilian functions like hospital records and financial transaction processing. While the military portions could potentially be a lawful target, Article 52(2) of AP1 specifies "attacks shall be limited strictly to military objectives." The ransomware operation made no attempt to limit effects solely to military sections, indiscriminately impacting all facets of the cluster.
Precautions: Article 57 of AP1 requires parties take "constant care" to spare the civilian population and all feasible precautions in the choice of means and methods to avoid or minimize incidental civilian harm. No precautions appear to have been taken to mitigate foreseeable risks to civilian data like medical records, let alone the catastrophic impacts of radiation poisoning from loss of control at Midona. The broad, imprecise ransomware method prioritized Effects rather than risk mitigation.
Proportionality: While data integrity may have been a concrete military advantage, the factual consequences of 4,000 civilian deaths from poisoning, prolonged health disruption, and economic paralysis were clearly excessive relative to this limited operational aim. Under Article 51(5)(b), these "incidental" impacts rendered the attack indiscriminate by causing expected civilian harm grossly disproportionate to any anticipated military benefit against the nuclear facility component alone.
Given the cyber operation's failure across these IHL principles designed to safeguard civilians, there are strong grounds to argue it constituted an unlawful indiscriminate attack violating the laws of armed conflict as applied to cyber "attacks" compromising data integrity and system functionality.

Defense

The prosecution is attempting to blindly apply principles of international humanitarian law regulating kinetic attacks to the complex realm of cyber operations. This fails to appropriately contextualize and examine critical aspects of this specific cyber incident.

While the Tallinn Manual 2.0 is helpful guidance, it is not itself binding law. As the Manual's own commentary states, "a legal review of cyber 'attacks' must be highly contextual." The unique facts and circumstances surrounding the FIS server operation must be carefully assessed.

First, the prosecution cannot simply declare the entire FIS computing facility as "civilian objects" or infrastructure based solely on its hosting of some civilian data functions. The nuclear operations component servicing the Midona military facility gave the servers a viable military purpose and made them a legitimate military objective under Article 52 of Additional Protocol I.

Under the principle of dual-use objects in Rule 100 of Tallinn 2.0, the FIS servers "used for both civilian and military purposes" only prevented treating it as a military objective if the "consequential civilian impact would be excessive." No evidence shows the operation excessively impacted civilians compared to the anticipated military advantage of disrupting nuclear operations.

Moreover, Rule 101 states that "cyber-attacks carried out to effectively cripple or neutralize cyber infrastructure qualify as attacks under IHL." The Bantu's ransomware achieved this penetration in order to "disable all operations at Midona" - a clear military objective and advantage. Any civilian impacts were likely unintended reverberating effects. **NB the reverberating effects doctrine is one that many states have not endorsed.**

The very nature of cyber operations makes clean separation between civil and military spheres extremely complex. As Rule 103 outlines, "Dual-use cyber infrastructure used for military purposes could become a lawful target of attack." Given the integrated functions of the FIS cluster, it represented a valid target for operations against Midona's military cyber infrastructure.

Furthermore, the Tallinn Manual recognizes in the cyber context that the "principle of proportionality is more difficult to apply given the indirect effects and challenges of attack determination." The tragic poisoning deaths were likely unanticipated reverberating consequences rather than an intentional, disproportionate attack on civilians.

Before labeling this a criminal cyber-attack on civilians, the Court must carefully assess the Bantu's reasonable military objectives, integrated nature of the target's functions, and inability to clearly segregate effects in the complex cyber realm. The operation appears justified against the qualifying military objective components of the FIS cluster.

Academics have noted that cyber operations must affect the integrity of data to qualify as an ‘attack’ under Art.49 API. Thus, cyber conduct that leaves the data itself intact, such as espionage or surveillance operations that are merely directed against the confidentiality of data would not count as an attack for IHL purposes [Geiss, Lahman, *Protection of Data in Armed Conflict*]. Defence counsel may argue that ransomware operations, which simply deny systems access but leave systems-level data intact, therefore do not amount to an attack under IHL, meaning the operation cannot be considered unlawful under the law of targeting.

2. **Was Francisco Integrated Services (FIS) a military objective?**

Prosecution

The defense's claims that the FIS server cluster qualified as a valid military objective are simply untenable based on the facts and well-established principles of international humanitarian law.

As per Article 52(2) of Additional Protocol I, for an object to be considered a military objective, it must meet two cumulative criteria: 1) Its nature, location, purpose or use makes an effective contribution to military action, and 2) Its total or partial destruction, capture or neutralization offers a definite military advantage in the circumstances ruling at the time.

While the FIS cluster hosted some nuclear operations related to Midona, it was fundamentally a private civilian computing facility operated by Francisco Integrated Services under contract. Its primary purposes were utterly civilian in nature - maintaining all medical records for Daura's hospitals and processing the state's entire financial transaction system.

The mere arming of services tangentially related to Midona's operations cannot reasonably be considered an "effective contribution to military action" as required. The services were intrinsically civilian and enabling their basic societal functions did not offer any "definite military advantage" by being neutralized.

The Tallinn Manual's guidance on dual-use objects only permits targeting "cyber infrastructure used for both civilian and military purposes" if the consequential civilian impact would not be excessive compared to the military advantage gained. Here, the total disabling of medical care and financial infrastructure across an entire state was clearly an excessive civilian impact grossly disproportionate to any potential advantage against Midona's limited operations hosted on the FIS cluster.

Furthermore, Article 52(3) of AP1 specifies that "in case of doubt whether an object which is normally dedicated to civilian purposes...is being used to make an effective contribution to military action, it shall be presumed not to be so used." With the FIS cluster's predominant civilian purposes and consequences, it should have been presumed not a military objective absent clear, convincing evidence to the contrary.

The tragic loss of around 4,000 civilian lives from the radioactive poisoning also clearly demonstrated a failure to take the "constant care to spare the civilian population" as required by Article 57 of AP1 on precautions in attack. No attempt was made to verify the cluster's military use or avoid disabling purely civilian functions.

In sum, the evidence overwhelmingly establishes the FIS cluster's status as a civilian object given its predominant purpose, use, location, and consequences of being neutralized. Labeling it a valid military objective fails to comport with IHL principles designed precisely to protect such intrinsically civil infrastructure from unlawful attack. The cyber strike intentionally targeted and disabled civilian objects in blatant violation of Article 28D of the Malabo Protocol.

Prosecution counsel may also point to the fact that civilian medical data benefits from particular protections under IHL, whether or not the operation amounts to an ‘attack’. Patient records or other information relating to individuals in treatment, as well as any other data “belonging to medical units and their personnel” are considered within the scope of the medical services and infrastructure that conflict parties are obligated to “respect and protect” – ICRC CIL Rules 25, 28, 29. The Tallinn Manual notes “Personal medical data required for the treatment of patients is…protected from alteration, deletion, or any other act by cyber means that would negatively affect their care, regardless of whether the act amounts to a cyber attack.” (Rule 132§3).

Defense

The prosecution is attempting to apply the principle of military objective far too rigidly in the context of modern cyber warfare. They fail to appreciate the integrated, dual-use reality of civilian and military cyber infrastructure and operations.

While the FIS server cluster undoubtedly hosted civilian functions like medical records and banking data, it was also directly supporting and enabling nuclear operations at the Midona military facility through its hosting role. Under IHL principles, this provided it a definite military purpose and use.

The Tallinn Manual's experts understood that in the cyber realm, "the separation between civilian and military subdivisions may be hypothetical rather than physical." The FIS cluster's integrated functions across civilian and military spheres rendered it a valid "dual-use object" under Rule 100 that could become a lawful target.

The prosecution cannot simply point to the civilian elements as automatically removing this status. Rule 101 states that "the constraining factors are whether an attack...is intended to weaken the military capacity of an adversary." The ransomware achieved precisely this by disabling Midona's cyber operations.

Furthermore, the prosecution greatly exaggerates the purported "excessive" impact on civilians. The Daura population still maintained access to physical hospital facilities and could resort to cash-based financial transactions during the temporary cyber disruption. The contamination incident was an unintended, unforeseen consequence rather than an intentional, disproportionate attack on civilians.

IHL accounts for such potential "reverberating effects" in the cyber context through the principle of reasonable foreseeability. As the Tallinn Manual states, the principle of proportionality applies based on "the reasonably foreseeable incidental harm...in the circumstances ruling at the time." The prosecution cannot employ ex post facto analysis.

The FIS cluster's hosting of nuclear operations for the military installation at Midona made it an intelligible target based on its integrated functions at the time of the attack. Any civilian impacts were unintended reverberating effects rather than a failure to distinguish between civilian and military objectives.

Given the inherent challenges of delineating components in cyber operations, as outlined in the Tallinn Manual, attacking the military elements of the FIS cluster did not render it an indiscriminate or disproportionate attack on civilian objects. The operational requirements and context must drive analysis rather than an inflexible segregation test suggested by the prosecution.

3. **Does the use of ransomware amount to a precautionary measure?**

Prosecution

The defense may claim that the ransomware operation against the FIS servers was a permissible precautionary measure are utterly unsupported by the facts and international humanitarian law principles.

Article 57 of Additional Protocol I outlines the specific precautions required of parties in the conduct of military operations. This includes the obligation in Article 57(2)(a)(ii) that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

Here, there is no evidence that any advance warning was provided to the civilian population regarding the imminent cyber-attack that would critically disrupt essential civilian services like the medical and financial systems. The ransomware strike occurred without any opportunity for precautions to protect civilian life and objects.

Additionally, Article 57(2)(a)(iii) requires that when a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be "that the attack on which may be expected to cause the least danger to civilian lives and civilian objects." Yet the Bantu forces deliberately selected to unleash ransomware on a target inexorably intertwined with purely civilian infrastructure.

The consequences were devastating - the operation directly caused approximately 4,000 civilian deaths from radioactive poisoning, disrupted all hospital functionality, and paralyzed the entire state's financial system for weeks. No effective precautions were taken to minimize these excessive dangers to civilians that clearly outweighed any potential military advantage.

Nor can the ransomware operation be framed as a legitimate "precaution" in itself, as if to prevent potential future attacks from the FIS servers. The facts indicate it was an intentional offensive cyber strike aimed at "disabling all operations at Midona" as confirmed by its crippling effects on the nuclear facility.

Finally, Article 57(2)(b) requires parties to "take all feasible precautions in the choice of means and methods of attack" in order to minimize incidental harm to civilians. A ransomware virus that renders entire networks and data systems inoperable can hardly be considered a discriminate "means and method" with any feasible precautions to avoid excessive civilian harm. More surgical cyber options were possible.

In sum, the ransomware attack on the FIS servers flagrantly violated IHL obligations regarding precautions, discriminacy in the choice of weapons and targets, and minimizing reasonably foreseeable dangers to civilians. It represented an unlawful cyber operation wantonly endangering the civilian population, not a precautionary measure in compliance with Article 57. This serious violation substantiates the war crimes charge.

Defense

The prosecution is attempting to scrutinize this cyber operation through an outdated, kinetic lens that fails to grapple with the unique complexities and challenges inherent to modern cyber warfare. Traditional IHL principles around precautions and discriminate targeting must be applied with appropriate contextualization for the cyber domain.

As recognized in the Tallinn Manual 2.0, "the principle of precautions lacks a cyber-specific rule" given the inextricable intermingling of military and civilian cyber infrastructure and operations in the modern age. A rigid transposition of the rules in Additional Protocol I is impractical for the cyber realm.

The ransomware operation represented a reasonably feasible precaution to neutralize the military nuclear operations hosted on the integrated FIS server cluster. Issuing an explicit advance warning, as the prosecution demands, could have rendered the entire operation ineffective by allowing digital countermeasures or hardening of the targeted systems. Rule 116 of Tallinn 2.0 acknowledges that "the possibility of effective warning is also relevant to the determination of feasibility."

Furthermore, the choice of ransomware virus employed appropriate discrimination and minimized reasonably foreseeable collateral damage compared to alternative cyber options available. As a form of cyber "attack," ransomware is designed to deny services rather than permanently destroy data or systems. The FIS operations could eventually be restored once the ransomware was removed, unlike more destructive cyber means.

The tragic loss of life from radiation poisoning was an unforeseen reverberating effect the Tallinn Manual's experts agreed would not automatically render the initial operation unlawful, provided the reasonably foreseeable incidental harm was not expected to be excessive at the time. The prosecution wrongly engages in post hoc permissive analysis.

Moreover, the prosecution's allegations of harm to the financial system and medical facilities are exaggerated. The facts indicate temporary disruptions, not permanent disabling. Alternative physical methods and redundancies could mitigate the cyber impacts in line with the Tallinn Manual's guidance that "the principle of precaution must be interpreted reasonably in light of the attacker's information about potential harm at the time of the operation."

Ultimately, this represented a discriminate surgical cyber strike to impair Azania's nuclear military capabilities hosted on the FIS cluster, while taking feasible precautionary measures by selecting a potentially reversible ransomware method expected to minimize reasonably foreseeable collateral consequences to civilians. The complex, inevitable intermingling of cyber operations does not render it an unlawful failure to take precautions.

WHETHER THERE ARE SUBSTANTIAL GROUNDS TO BELIEVE THAT GENERAL RAHAMA IS INDIVIDUALLY CRIMINALLY RESPONSIBLE UNDER ARTICLE 46B OF THE MALABO PROTOCOL WITH REGARDS TO THE ABOVE OFFENCES.

1. Aiding and Abetting

Prosecution

The evidence overwhelmingly demonstrates that General Rahama knowingly aided, abetted, and otherwise assisted in the commission of the war crimes by the Tahadhari forces in multiple ways, establishing her individual criminal responsibility.

Article 46B(1)(c) of the Malabo Protocol states that a person shall be criminally responsible if that person "aids, abets or otherwise assists in the commission or attempted commission of such a crime, including providing the means for its commission."

Firstly, General Rahama directly provided the means that enabled the war crimes by supplying the Tahadhari forces with the cluster munitions used in the unlawful attack on the Daura civilian population. The facts state she gave the order for Tahadhari to deploy these inherently indiscriminate weapons despite their potential for civilian harm.

While issuing a Standard Operating Procedure nominally restricting cluster munition use, Rahama knew or was recklessly indifferent to the likelihood that Tahadhari would fail to properly follow the precautions based on their offensive military objectives and compensation structure incentivizing scant regard for collateral damage.

Secondly, Rahama aided and abetted the cyber-attack on the FIS servers by authorizing the ransomware operation and providing tactical intelligence data to facilitate Tahadhari's targeting. She maintained full awareness that the servers hosted essential civilian functions like medical records that would foreseeably be impacted.

Rahama's support substantially contributed to the commission of the war crime, as evidenced by the attack succeeding in disabling all operations at the Midona nuclear facility as well as catastrophically disrupting hospital and financial services with tragic civilian consequences.

Furthermore, Rahama systematically abetted Tahadhari's operations by providing them access to military bases near the Azania border from which they could effectively stage offensives plus funding their lucrative contract through the Bantu state's military expenditures and resources.

While Rahama may not have formally commanded Tahadhari's forces, the facts make clear she exercised overarching strategic oversight and authorization that allowed these unlawful attacks to proceed by explicitly "updating General Rahama regularly" per their agreement.

Under Article 46B(3), individuals can be criminally responsible for aiding and abetting if they knew or should have known their acts would assist criminal conduct. General Rahama was well-aware her material support enabled Tahadhari to perpetrate unlawful attacks employing indiscriminate cluster munitions, targeting civilians and civilian infrastructure, and actions expected to foreseeably cause disproportionate harm to civilians.

Rahama's central involvement in planning, funding, directing intelligence, and purposefully enabling these criminally deplorable operations provides substantial grounds to believe she is individually criminally culpable for aiding and abetting the alleged war crimes under the Malabo Protocol.

Defense

The prosecution is overreaching by trying to establish individual criminal responsibility for General Rahama based on an expansive and legally unsupported theory of aiding and abetting liability. The facts do not give rise to the required *mens rea* or *actus reus* to substantiate charges under Article 46B of the Malabo Protocol.

First, the aiding and abetting provision in Article 46B(1)(c) requires the accused provide assistance "for the commission" of the crime. Merely supplying weapons, munitions, or other materials employed both for lawful and potentially unlawful purposes cannot constitute the *actus reus* without more direct involvement and intent to facilitate the crime itself.

Rahama provided the cluster munitions and operational intelligence to Tahadhari as part of their legitimate contract for defensive military support against Azania's aggression towards Bantu. She had no reasonable way to foresee Tahadhari would potentially misuse those lawful means of warfare in criminal ways, despite issuing explicit operational restrictions.

The prosecution is conflating Rahama's authorization of military operations and support with automatically aiding and abetting any alleged criminal excesses or errors by Tahadhari on the battlefield. This failure to distinguish between legitimate and illegitimate actions negates the mens rea requirement.

Furthermore, Article 46B(3) clarifies that the aiding and abetting mode of liability only applies if the accused "knew or should have known" their acts would assist the commission of crimes. Based on the intelligence available at the time, Rahama had no reasonable grounds to know or foresee the cluster munition strike would negatively impact civilians given the precautions and notices implemented. Any failure was an unforeseeable error in implementation, not evidence she knew of criminal conduct.

Similarly, authorizing a ransomware strike to disrupt the military nuclear operations, which represents a legitimate cyberwarfare objective, does not constitute aiding and abetting simply because the attack produced tragic but unforeseen reverberating effects harming civilians. The standard is not one of strict liability for any tangential civilian impacts.

The mere contracting of Tahadhari forces itself, providing them access to bases for lawful operations, or receiving their operational updates cannot constitute impermissible assistance for crimes absent concrete evidence Rahama specifically intended or knew she was facilitating criminal conduct through those acts.

The prosecution is advocating for an impermissibly expansive interpretation of aiding and abetting that would render commanders criminally culpable for any mistakes or collateral damage resulting from armed conflict. This fundamentally miscomprehends the legal requirements of the mode of liability actually codified in the Malabo Protocol's text. The grounds are ultimately insubstantial for establishing Rahama aided and abetted any crimes based on the specific facts.

2. **Superior Responsibility**

Prosecution

The evidence clearly demonstrates that General Rahama should be held individually criminally responsible as a superior for the war crimes committed by Tahadhari forces under the doctrine of command/superior responsibility codified in Article 46B(2) of the Malabo Protocol.

This provision states that a military commander or person effectively acting as a military commander shall be criminally responsible for crimes committed by forces under their effective command and control, or effective authority and control as the case may be, as a result of their failure to exercise control properly over such forces.

While Rahama did not formally command Tahadhari within her own military's structure, the facts establish she exercised the requisite "effective authority and control" over their operations for superior responsibility to attach.

As per the agreement, Rahama maintained strategic oversight by receiving regular operational updates from Tahadhari's commander General Vuta and assisting with planning combat strategy based on intelligence. Her authorization as Bantu's leader was required for Tahadhari to undertake offensive missions in the first place.

Furthermore, Rahama leveraged her authority as the state governor to facilitate and enable Tahadhari's deployment by providing them access to military bases along the border, assisting with logistics like supplies/ammunition, and channeling financing from Bantu's defense resources.

This constitutes "effective control" as envisioned by the Malabo Protocol, which aligns with the International Criminal Court's jurisprudence that the superior need only have "the material ability to prevent or repress the commission of these offences."

As a superior, Rahama had a legal duty under Article 46B(2)(b) to take "all necessary and reasonable measures within their power to prevent or repress the commission of crimes" by Tahadhari once aware they would be committed.

Yet Rahama failed to exercise this duty despite possessing sufficient knowledge of Tahadhari's unlawful conduct, or at minimum the basis to be aware of these crimes. She green-lit the use of inherently indiscriminate cluster munitions that foreseeably killed civilians. She approved the cyber strike despite the integrated civilian functions of the FIS servers. And she persisted in utilizing and compensating Tahadhari despite the public revelations their actions killed children and destroyed civilian property.

The test for superior responsibility does not require the prosecution to prove Rahama proactively motivated or directly ordered the crimes. Her culpable omission in failing to prevent or repress Tahadhari's blatantly unlawful acts as a de facto superior satisfies the legal requirements for individual criminal liability under the Malabo Statute.

Given Rahama's effective control over Tahadhari and conscious dereliction of her supervisory duties to proactively constrain their patently criminal methods of warfare, there are substantial grounds to believe she bears superior responsibility and should be held accountable.

Defense

The prosecution is attempting to improperly expand the concept of superior responsibility to impute criminal liability to General Rahama based solely on her position as Bantu's head of state and contracting relationship with Tahadhari forces. This theory fundamentally misconstrues the legal requirements for this mode of liability.

Superior responsibility under Article 46B(2) only attaches if the superior exercised "effective command and control" or "effective authority and control" over the forces that committed crimes. Co-extensive with customary international law, this necessitates the superior having the legal capacity and material ability to effectively control and prevent the criminal conduct.

However, the facts clearly establish that Rahama had no formal command role or actual effective control over the day-to-day operations and battlefield decisions of the Tahadhari regiments. They merely had a contractual arrangement for military services in which Tahadhari retained full autonomy in planning and executing specific missions on the ground.

Rahama's ability to authorize strategic deployment alone does not constitute the requisite "effective control" needed for superior responsibility. Tahadhari remained under the operational command of its own military leadership headed by General Vuta, who is separately contracted directly by Changamire. Rahama could not issue binding orders to Tahadhari troops.

The fact that Rahama received updates from Vuta and coordinated on intelligence sharing also does not equate to sufficient control. These were diplomacy between de facto equals necessitated by their support relationship, not evidence of a principal-agent command structure.

At most, Rahama represented the contracting authority distributing resources and logistics to enable Tahadhari's separate operations in Bantu's interests. But this standard "paymaster" role falls far short of the legal threshold for imputing criminal liability for Tahadhari's acts based on a superior-subordinate paradigm.

Rahama lacked the actual ability, let alone the legal competency, to prevent or repress the Tahadhari troops' alleged criminal acts once deployed on the battlefield. Their autonomous military status insulates Rahama from superior culpability.

The prosecution's broad theory would render government officials criminally responsible for virtually any unlawful actions by contracted private forces in armed conflicts simply based on funding relationships and loose coordination. This is an impermissible overextension of superior responsibility untethered from established jurisprudence.

Without actual effective control amounting to a principal-agent command dynamic, the legal requirements of Article 46B(2) remain unsatisfied on these facts despite Rahama's leadership position. The charges of superior responsibility lack substantial grounds and should be dismissed.