

Nuremberg Moot Court 2022

Team No.: 2022-5

Prosecution

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The Court “shall rule on any challenges or questions of jurisdiction *first*, and then on any challenge or question of admissibility.”¹ Acknowledging that admissibility is the first ground challenged by the Defense,² and also taking into account Rule 58 of the Rules of Procedure and evidence, the Prosecution wishes to address Court’s jurisdiction first, and then present grounds for admissibility.

I. THE CASE AGAINST MR. GRAVUS FALLS WITHIN THE JURISDICTION OF THE COURT PURSUANT TO ART. 19 OF THE ROME STATUTE.

For the Court to have jurisdiction over a case before it, all the grounds for jurisdiction need to be present *i.e.* jurisdiction *ratione materiae*, *ratione temporis*, *ratione loci*, and possibly *ratione personae*.³ Furthermore, jurisdiction *ratione personae* does not apply in application of Art. 13(b).⁴ There are reasonable grounds to believe that the Court has jurisdiction over the case against Mr. Gravus, as the issue of jurisdiction has once been dealt with when issuing a warrant for arrest of Mr. Gravus [A]. Moreover, the SC has adopted a Res. referring the situation in the Republic of Hanatun to the Prosecutor [B]. Furthermore, the Court has jurisdiction *ratione loci*, *ratione temporis* [C] and *ratione materiae* [D]. As follows, the Court has jurisdiction over the present case.

I.A. Jurisdiction *ratione materiae* has once been dealt with by the Court when issuing an arrest warrant for Mr. Gravus.

Indeed, the arrest warrant of a perpetrator can be issued only if the Chamber is convinced that, *inter alia*, there are reasonable grounds to believe that at least one crime within jurisdiction of the Court has been committed, and that there are reasonable grounds to believe that the person has incurred criminal responsibility under the relevant provisions of the Statute.⁵ As the warrant of arrest for Mr. Gravus has been issued for the crime of genocide,⁶ the issue of jurisdiction *ratione materiae* and alleged criminal responsibility of Mr. Gravus has been once dealt with prior to issuing the warrant. Therefore, there are reasonable grounds to believe that, *inter alia*, the Court has jurisdiction.

¹ Rules of Procedure and Evidence, Rule 58(4), emphasis added.

² Case Facts, para. 19.

³ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, Preamble, para. 10; Arts. 1, 17(1)(a). (“Rome Statute”), Art. 5, 11, 12; ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/07, Decision on the Prosecutor's Application for Warrants of Arrest, Article 58, 10 February 2006, para. 24; ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 36.

⁴ ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, paras 36, 40.

⁵ Rome Statute, Art. 58; ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 28.

⁶ Case Procedural History, para. 2.

I.B. The Court has jurisdiction pursuant to the SC Res. 2022 and Art. 13(b) of the Statute.

SC plays an important role in maintenance of international peace and security, as it forms the core objective of the UN.⁷ Moreover, Art. 13(b) of the Statute gives the SC the power to refer situations of international concern to the Court,⁸ if they fall under Art. 5 of the Statute, and constitute crimes of international concern.⁹ The SC, through Res. 2022, has referred the situation in Hanatun to the Prosecutor so as to investigating the alleged crimes committed in that territory.¹⁰ Therefore, the Court's jurisdiction in the case against Mr. Gravus is present.

I.C. The Court has jurisdiction *ratione loci* and *ratione temporis*.

The Court can exercise its jurisdiction if it has, *inter alia*, jurisdiction *ratione temporis* and *ratione loci* i.e. jurisdiction over a particular place, after the entry into force of the Rome Statute.¹¹ As the situation referred by the SC has occurred after the entry into force of the Statute,¹² and as Castiria falls under the situation in the Republic Hanatun,¹³ both grounds are met. Therefore, the Court has jurisdiction *ratione loci* and *ratione temporis*.

I.D. The Court has jurisdiction *ratione materiae*.

The Court can exercise jurisdiction over a case when, alongside other grounds,¹⁴ it has jurisdiction *ratione materiae* under Art. 5 of the Statute.¹⁵ Furthermore, Elements of Crimes shall assist the Court in interpreting the crimes under Art. 5, and also application of them.¹⁶ The alleged crimes fall under Art. 6(a) and 6(c) through killing of Castirians,¹⁷ and deliberately inflicting on the group conditions of life with the intent to physically destroy them.¹⁸ As follows, the Court has jurisdiction *ratione materiae* as there are reasonable grounds to believe that the Elements of Art. 6(a) and 6(c) are met.

I.D.1. Elements of Art. 6(a) related to killing of Castirian men are met.

I.D.1.a. One or more persons were killed.

The first Element for Art. 6(a) is related to killing, or causing death of persons.¹⁹ Mr. Gravus's plans and orders have resulted in the killing of 200 Castirian men between 1 July and 30 September 2019

⁷ UN Charter, Art. 24.

⁸ Rome Statute, Art. 13(b); William Schabas, *An Introduction to the International Criminal Court* (3rd ed.), p. 151.

⁹ Rome Statute, Art. 5.

¹⁰ Case Facts, para. 16.

¹¹ ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 37.

¹² Case Procedural History, para. 1.

¹³ Case Facts, para. 4.

¹⁴ ICC, *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, ICC-02/05-01/20, Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302), 17 May 2021, para. 36.

¹⁵ Rome Statute, Art. 5.

¹⁶ *Ibid*, Art. 9; Elements of Crimes, para. 1.

¹⁷ Case Facts, para. 12.

¹⁸ *Ibid*, para. 15.

¹⁹ Elements of Crimes, Art. 6(a), para. 1.

following the commencement of searching houses to arrest suspects,²⁰ and also 86 male companions of those trying to flee Castiria at the Police checkpoints.²¹ Therefore, the first Element is satisfied.

I.D.1.b. The persons affected belonged to a protected group.

For the second Element to be satisfied, those targeted for the killing have to be part of a “national, ethnical, racial or religious group.”²² Additionally, it is accepted that for the group to fall under such category, objective-subjective approach shall be considered²³ *i.e.* being a protected group based on one of the categories,²⁴ and being perceived by the perpetrator as such.²⁵ Furthermore, an ethnic group is a group amongst which a common language or culture is shared.²⁶ In addition, it is the perpetrator of genocide who defines the status of the group targeted.²⁷ Statement made by Mr. X shows that when the Security Forces found out his *ethnicity* as a Hanu, they released him.²⁸ Furthermore, Castirians are an ethnical group, as they speak a distinct language and have a different culture.²⁹ Therefore, Castirians are a protected group, taking into account the subjective and objective analysis.

I.D.1.c. The intention was to destroy the protected group, in whole or in part.

For the mental element of genocide by killing to take place, other than a general intent, a special intent is also required.³⁰ The general intent includes knowledge and intent with regard to the conduct and the consequences,³¹ and *dolus specialis* requires an intent “to destroy, in whole or in part, that group, as such.”³² Furthermore, *dolus specialis* can be inferred from “genocidal declaration or speech”³³ and circumstantial evidence.³⁴ In 2019, Mr. Gravus employed discriminatory speech, condemned by international NGOs, and specifically called for eradicating the “Castirian cancer” off the map of the country.³⁵ Additionally, as clearly stated by Mr. Brian, the head of the Police who was directly accountable to Mr. Gravus,³⁶ the only concern was providing security *for the Hanu people* and the country.³⁷ Therefore, killing of 286 men was carried out with *dolus specialis*.

²⁰ Case Facts, para. 12.

²¹ Ibid, para. 14.

²² Elements of Crimes, Art. 6(a), para. 2; William Schabas, *Genocide in International Criminal Law: the Crime of Crimes* (2nd ed., 2009), p. 117.

²³ ICTR, *Prosecutor v. Laurent Semanza*, ICTR-97-20-T, Judgement and Sentence, 15 May 2003, para. 317.

²⁴ ICTY, *Prosecutor v. Milomir Stakic*, IT-97-24-A, Judgement, 22 March 2006, para. 25.

²⁵ ICTY, *Prosecutor v. Radislav Krstic*, IT-98-33-T, Judgement, 02 August 2001, para. 557.

²⁶ ICTR, *Prosecutor v. Jean-Paul Akayesu*, ICTR-97-4-T, Judgement, 02 September 1998, para. 513.

²⁷ William Schabas, 2009, p. 125.

²⁸ Case Facts, para. 13.

²⁹ Ibid, para. 4.

³⁰ ICTR, *Prosecutor v. Jean-Paul Akayesu*, ICTR-97-4-T, Judgement, 02 September 1998, para. 517.

³¹ Rome Statute, Art. 30.

³² Elements of Crimes, Art. 6(a), para. 3.

³³ William Schabas, 2009, p. 265.

³⁴ William Schabas, 2009, p. 266.

³⁵ Case Facts, para. 10.

³⁶ Ibid, para. 11(e).

³⁷ Ibid, para. 12, emphasis added.

I.D.1.d. The conduct took place in the context of a manifest pattern of similar action directed against male Castirians.

Even though definition of genocide under ICTY and ICTR did not include a contextual element,³⁸ the Elements of Crimes includes such element for the crime under Art 6(a).³⁹ This means that other than taking place in “context of a manifest pattern of similar conduct”,⁴⁰ the conduct should also pose a concrete threat to existence of the targeted group, in whole or in part.⁴¹ The act of extra-judicial killing of 286 Castirian men by security forces took place in a manifest pattern, directed against male Castirians, both as a result of conducting searching houses,⁴² and male companions of women and children fleeing who were directly shot in the head.⁴³ Therefore, the said requirement is satisfied.

I.D.2. Elements of Art. 6(c) are cumulatively met.

I.D.2.a. Mr. Gravus’s plan has inflicted certain conditions of life upon Castirians.

The plan against the group has to inflict certain conditions of life upon persons.⁴⁴ As was held in *Akayesu*, by such plans, the perpetrator does not immediately kill the members of the group, but ultimately seeks their physical destruction.⁴⁵ The Prosecutor submits that even though the Court’s mandate is between March 2019 and September 2021,⁴⁶ it is worth mentioning that only after 45 days of taking control of the Government and becoming the President, Mr. Gravus drastically reduced the federal transfer payments to Castiria,⁴⁷ which clarifies Mr. Gravus’s state of mind regarding Castiria. Moreover, as a result of imposing a blockade and forceful closure of businesses⁴⁸ in an already fragile country dealing with access to water,⁴⁹ Mr. Gravus’s orders resulted in imposition of a harsh and inhuman situation in Castiria, resulting in famine throughout the Province,⁵⁰ an action widely condemned by the international community.⁵¹ Therefore, certain conditions of life were imposed.

³⁸ ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 119.

³⁹ Ibid, para. 121.

⁴⁰ Ibid, para. 123.

⁴¹ Ibid, para. 124.

⁴² Case Facts, para. 12.

⁴³ Ibid, para. 14.

⁴⁴ Elements of Crimes, Art. 6(c), para. 1.

⁴⁵ ICTR, *Prosecutor v. Jean-Paul Akayesu*, ICTR-97-4-T, Judgement, 02 September 1998, para. 505.

⁴⁶ Case Procedural History, para. 2.

⁴⁷ Case Facts, para. 6.

⁴⁸ Ibid, para. 15.

⁴⁹ Ibid, para. 3.

⁵⁰ Ibid, para. 15.

⁵¹ Ibid, para. 16.

I.D.2.b. Castirians are a protected group, and Mr. Gravus's intention and plan was to destroy the Castirian population, in whole or in part.

Other than general intent,⁵² *dolus specialis* requires that the plans were “intended to destroy, in whole or in part, ... group, as such.”⁵³ Furthermore, through inference of statements made and actions carried out, special intent can be acquired.⁵⁴ As proven earlier, Castirians are a protected group under both subjective and objective analysis of the facts. Moreover, *dolus specialis* can be inferred from the fact that some of the first actions taken by Mr. Gravus, a nationalist Pan-Hanu⁵⁵ was cutting financial aid to Castiria.⁵⁶ Furthermore, policies of imposing a blockade and closing of businesses which resulted in widespread famine, can be linked to the statements made by Mr. Gravus, in which he insisted on eradicating this “Castirian cancer”,⁵⁷ a phrase which later formed the chant stated by the Security apparatus.⁵⁸ Therefore, *dolus specialis* is present.

I.D.2.c. The plan and the conditions imposed were calculated to bring about physical destruction of Castirians.

The plan must be “calculated” to bring about physical destruction of the group,⁵⁹ meaning that “imposition of condition must be the principal mechanism used to destroy the group.”⁶⁰ Taken as a whole, the closure of businesses and imposing a blockade, which resulted in famine⁶¹ and death of many in an already fragile state of affairs related to water shortages, statements made by Mr. Gravus which later was incorporated as a chant in targeting civilians shows that such policies were calculated as the principal mechanism to destroy the group *i.e.* eradicating the “Castirian cancer.”⁶² Therefore, the plan was calculated to bring about destruction of Castirians.

I.D.2.d Mr. Gravus's plan took place in the context of a manifest pattern of similar conduct against Castirians.

The contextual element of Art. 6(c) requires that the plan takes place in a context of manifest pattern of similar conduct, and not random acts against a group.⁶³ The imposition of genocidal life conditions took place in a large-scale, extending over the whole Province, affecting many populous towns such

⁵² Rome Statute, Art. 30.

⁵³ Elements of Crimes, Art. 6(c), para. 3; ICTR, *Prosecutor v. Laurent Semanza*, ICTR-97-20-T, Judgement and Sentence, 15 May 2003, para. 312.

⁵⁴ William Schabas, 2009, p. 265.

⁵⁵ Case Facts, para. 6.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, para. 10.

⁵⁸ *Ibid.*, para. 13.

⁵⁹ Elements of Crimes, Art. 6(c), para. 4.

⁶⁰ William Schabas, 2009, p. 291.

⁶¹ Case Facts, para. 15.

⁶² *Ibid.*, para. 10.

⁶³ Elements of Crimes, Art. 6(c), para. 5.

as Luz, Luzari and Cisil.⁶⁴ Hence, the conduct meets the criterion under the Elements of Art. 6(c). In conclusion, Prosecution submits that the Court has jurisdiction over the case against Mr. Gravus.

II. THE CASE IS ADMISSIBLE UNDER ART. 17 OF THE ROME STATUTE.

Due to particular nature and objects of the Court as a complement to the national legal proceedings,⁶⁵ the Statute has set in place certain requirements, existence of which are imperative for admissibility of a case before the Court.⁶⁶ Moreover, the test under Art. 17 has two “limbs”⁶⁷; the first related to the principle of complementarity,⁶⁸ and the second related to gravity.⁶⁹ Both grounds for admissibility are present as the complementarity principle is upheld [A], and the gravity threshold is met [B]. As follows, requirements of admissibility are present.

II.A. The complementarity principle is upheld.

Under the principle of complementarity, ICC merely complements national proceedings.⁷⁰ Furthermore, based on case-law of the Court, it is analyzed whether the *same case* investigated at the Court is being investigated at the domestic level,⁷¹ and only when such action is being taken at the national level, unwillingness and inability are analyzed.⁷² The Prosecution is of the belief that the *same case* is not being investigated at the national level, hence, analysis of unwillingness and inability does not arise [1]. Additionally, Hanatun is unwilling [2] and unable [3] to investigate the case against Mr. Gravus. As follows, the case against Mr. Gravus can be held admissible.

II.A.1. The “*same case*” was not under investigation at the national level.

If the State investigating the matter under Art. 17(1)(a) has been conducting its investigations over the same “case”, this can be invoked as a ground for inadmissibility, pending other requirements.⁷³ Based on the case-law of the Court, the correct interpretation of a “case” at the national level includes

⁶⁴ Case Facts, paras 12, 15.

⁶⁵ ICC, *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, ICC-01/09-02/11, Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute, 30 May 2011, para. 40.

⁶⁶ Rome Statute, Art. 17.

⁶⁷ ICC, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, ICC-01/11-01/11, Decision on the admissibility of the case against Abdullah Al-Senussi, 11 October 2013, para. 27.

⁶⁸ Rome Statute, Art. 17(1)(a)-(c).

⁶⁹ *Ibid*, Art. 17(1)(d).

⁷⁰ ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/07, Decision on the Prosecutor's Application for Warrants of Arrest, Article 58, 10 February 2006, para. 36.

⁷¹ ICC, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, ICC-01/11-01/11, Decision on the admissibility of the case against Saif Al-Islam Gaddafi, 31 May 2013, para. 60.

⁷² ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/07, Decision on the Prosecutor's Application for Warrants of Arrest, Article 58, 10 February 2006, para. 29; ICC, *Prosecutor v. Bahar Idriss Abu Grada*, ICC-02/05-02/09, Decision on the Confirmation of Charges, 8 February 2010, para. 29.

⁷³ ICC, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, ICC-01/11-01/11, Decision on the admissibility of the case against Abdullah Al-Senussi, 11 October 2013, para. 169.

the “same person” and “conduct”.⁷⁴ Additionally, as present in the Court’s jurisprudence, the party challenging the admissibility hold the burden of proving the conditions.⁷⁵ The investigations undertaken by the new Government of Hanatun is stated to be concerning “crimes” allegedly committed as of 3 November 2015 in all parts of the Republic.⁷⁶ In any event, Prosecution, having in mind that the burden of proof is on the Defense, is of the view that inclusion of the general wording of “crimes”⁷⁷ at the national level does not make the proceedings before the Court inadmissible, as the requirements of the “same person/same conduct” test are not met, as the warrant of arrest is related to the crime of genocide under Art. 6(a) and 6(c).⁷⁸ Therefore, due to inaction at the national level related to the same “case”, the case against Mr. Gravus is admissible before the Court.

II.A.2. Additionally, Hanatun is *unwilling* in investigating Mr. Gravus.

Under Art. 17(1)(a), when a State is found to be investigating the same “case”, if unwillingness is present, the case can be held admissible.⁷⁹ Furthermore, for determining such unwillingness, Art. 17(2) and its subparagraphs are applicable.⁸⁰ Moreover, in analyzing whether this requirement is present or lacking in a given case, the Court analysis is done on a case-by-case basis.⁸¹ In the present case, Art. 17(2)(c) is applicable. After the military *coup*, General Hitch became the “Commander-in-Chief of the *central government*.”⁸² The Prosecution submits that this is indicative of the fact that investigations cannot be taken in an impartial and independent manner, as General Hitch, like his predecessor,⁸³ is in control of the Judiciary as well. Moreover, Prosecution is of the view that *taken as a whole*, the remarks made by the Generals regarding the release of Mr. Gravus before conclusion of the investigation,⁸⁴ and the peculiar form in the Hanatun system of Government makes the investigations inconsistent with the intent to bring Mr. Gravus to justice. Therefore, Prosecution submits that Hanatun is *unwilling* to investigate the case against Mr. Gravus.

⁷⁴ ICC, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, ICC-01/11-01/11, Decision on the admissibility of the case against Saif Al-Islam Gaddafi, 31 May 2013, paras 58, 60, 61.

⁷⁵ *Ibid*, para. 52.

⁷⁶ Case Facts, para. 18.

⁷⁷ *ibid*.

⁷⁸ Case Procedural History, para. 2.

⁷⁹ Rome Statute, Art. 17(a); ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Reasons for the Oral Decision on the Motion Challenging the Admissibility of the Case (Article 19 of the Statute), 16 June 2009, para. 74.

⁸⁰ Rome Statute, Art. 17(2).

⁸¹ ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Reasons for the Oral Decision on the Motion Challenging the Admissibility of the Case (Article 19 of the Statute), 16 June 2009, para. 91.

⁸² Case Facts, para. 17.

⁸³ *Ibid*, para. 6.

⁸⁴ *Ibid*, para. 18.

II.A.3 Hanatun is *unable* to investigate the alleged crimes committed by Mr. Gravus.

Inability to investigate the alleged crimes is an additional or alternative⁸⁵ ground alongside unwillingness to make a case admissible before the Court.⁸⁶ Inability can be invoked as a ground for admissibility if due to, *inter alia*, unavailability of the national judicial system, the State is unable to conduct genuine investigations.⁸⁷ Furthermore, it has been advocated that lack of impartiality and independence at the judiciary can amount to inability by the State.⁸⁸ Due to the inherent lack of independence as proven earlier, the judicial system of Hanatun can be considered to meet the criteria set in place under Art. 17(3). Therefore, Hanatun is unable to genuinely investigate the case.

II.B. The gravity threshold in the case against Mr. Gravus is met.

Under Art. 17(1)(d), gravity is another criterion which *must* be taken into account by the Court for admissibility of the case, as the *chapeau* of Art. 17 uses the wording “shall”.⁸⁹ Furthermore, the mere fact that a case before the Court incorporates one of the crimes under Art. 5 of the Statute is not sufficient to meet the “additional gravity threshold”⁹⁰ under Art. 17. Moreover, in the case of *Lubanga* requirements for the additional gravity threshold of Art. 17(1)(d) were specified, and if questions as to large-scale character of the conduct and position of the person as the most senior leader can be answered in the affirmative, the threshold is met.⁹¹ The conduct has been systematic or large [1]. Moreover, Mr. Gravus has been the most senior leader within Hanatun, and considered to be the most responsible [2]. As follows, the gravity threshold is met.

II.B.1. The conduct directed against Castirians has been systematic or large-scale.

In determining the large-scale nature of the conduct, “due consideration should also be given to the social alarm caused to the international community.”⁹² The actions carried out against Castirians were extended across the whole of Castiria, affecting many populous cities across the Province such as Luz, Luzari and Cisil. Furthermore, the international community has expressed their concern with regard to the situation in Hanatun with regard to Castiria.⁹³ In addition, Res. 2022 by the SC can be

⁸⁵ ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Reasons for the Oral Decision on the Motion Challenging the Admissibility of the Case (Article 19 of the Statute), 16 June 2009, para. 75.

⁸⁶ ICC, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, ICC-01/11-01/11, Decision on the admissibility of the case against Saif Al-Islam Gaddafi, 31 May 2013, para. 138.

⁸⁷ Rome Statute, Art. 17(3).

⁸⁸ ICC, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, ICC-01/11-01/11, Observation on behalf of the victims on the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the Rome Statute”, 17 June 2013, para. 80; ICC, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, ICC-01/11-01/11, Decision on the admissibility of the case against Abdullah Al-Senussi, 11 October 2013, para. 247

⁸⁹ Rome Statute, Art. 17; ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/07, Decision on the Prosecutor's Application for Warrants of Arrest, Article 58, 10 February 2006, para. 44.

⁹⁰ ICC, *Prosecutor v. Bahar Idriss Abu Grada*, ICC-02/05-02/09, Decision on the Confirmation of Charges, 8 February 2010, para. 30.

⁹¹ ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/07, Decision on the Prosecutor's Application for Warrants of Arrest, Article 58, 10 February 2006, para. 64.

⁹² *Ibid.*

⁹³ Case Facts, para. 16

considered as showing the social alarm to the international community.⁹⁴ Therefore, the conduct has been systematic or large-scale.

II.B.2. Gravus has been the most senior leader, considered to be the most responsible.

The *second* question raised by the Chamber in the *Lubanga* case is related to the person's position as the most senior leader when they are considered as the "man with the ultimate control of the policies/practices adopted and implemented"⁹⁵ and also being "in full control of the "apparatus" of the State."⁹⁶ As for the *third* question, it is analyzed whether the person can be considered to be the most responsible taking into account his role in commission of those acts by the State entities.⁹⁷ Mr. Gravus has been in control of all three branches of Government,⁹⁸ and has masterminded the plans carried out against the Castirian group.⁹⁹ Moreover, all State entities enforcing decisions have done so under the aegis of Mr. Gravus's authority.¹⁰⁰ Therefore, Mr. Gravus has been the most senior leader, considered as being the most responsible.

Therefore, for all the foregoing reasons, Prosecution submits that there are reasonable grounds to believe that the case against Mr. Gravus can be rendered admissible.

III. MR. GRAVUS IS CRIMINALLY RESPONSIBLE FOR GENOCIDE UNDER ARTICLE 28 (A) (B) OF THE ROME STATUTE.

To constitute criminal responsibility, the following requirements shall be fulfilled: The accused, as a superior, should exercise effective control over his subordinates and the crimes were committed by the forces as a result of not exercising proper control over them [A]; The accused knew or should have known or consciously disregarded information that his forces were committing crimes [B]; The accused failed to take all necessary and reasonable measures to prevent the commission of the crimes [C].¹⁰¹ The Prosecution submits that all these requirements are met in the case of Mr. Gravus.

III.A. Mr. Gravus, as a superior, should exercise effective control over his subordinates and the crimes were committed by the forces as a result of not exercising proper control over them.

⁹⁴ Case Procedural History, para. 1.

⁹⁵ ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/07, Decision on the Prosecutor's Application for Warrants of Arrest, Article 58, 10 February 2006, para. 70.

⁹⁶ ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 148.

⁹⁷ ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/07, Decision on the Prosecutor's Application for Warrants of Arrest, 10 February 2006, para. 64(iii).

⁹⁸ Case Facts, para. 6.

⁹⁹ *Ibid*, para. 11.

¹⁰⁰ Case Facts, para. 11(e)

¹⁰¹ ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 170.

A military commander is a person who is formally or legally appointed to carry out a military command function.¹⁰² A Commander-in-Chief is a military commander,¹⁰³ and the fact that he is not acting exclusively as a military commander does not mean that he is a civilian superior.¹⁰⁴ To establish the superior-subordinate relationship, it is not enough to prove that the accused is a *de jure* superior; it should also be proven that he exercised effective control as well.¹⁰⁵ Effective control means "the material ability [or power] to prevent and punish" the crimes.¹⁰⁶ It is a "case-specific" matter,¹⁰⁷ meaning that it should be assessed based on the facts of each case.¹⁰⁸ The case law has introduced some factors that can be useful in this assessment, such as the accused's official position and the ability to issue orders, and whether he or she is representing the ideology that the subordinates adhere to it.¹⁰⁹ Mr. Gravus was the President of the Republic of Hanatun,¹¹⁰ who controlled all three branches of government in this country.¹¹¹ Simultaneously, he, as a Commander-in-Chief,¹¹² was legally enabled to control the military forces, and also SPG and NDS were under his direct command.¹¹³ As a result, the Office of the Prosecutor believes that he should be considered a military commander under Art. 28(a). Nonetheless, the Prosecution will submit that he can be held criminally responsible under Article 28(a)(b).

Mr. Gravus occupied the highest formal status in the country.¹¹⁴ He issued orders to close the Castirian parliament,¹¹⁵ and started the operation in Castiria,¹¹⁶ which was obeyed by his subordinates.¹¹⁷ The forces were influenced by Mr. Gravus's ideas about Pan-Hanu and Castirians. He influenced them to the extent that they chanted one of his discriminatory statements in the TV interview while committing crimes.¹¹⁸ Thus, the Office of the Prosecutor submits that Mr. Gravus exercised effective control over his subordinates.

¹⁰² Ibid, para. 176.

¹⁰³ ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 408.

¹⁰⁴ Ibid.

¹⁰⁵ ICTY, *Prosecutor v. Naser Orić*, IT-03-68-T, Judgment of the Trial Chamber, 30 June 2006, para. 311.

¹⁰⁶ ICTY, *Prosecutor v. Delalic et al*, Case No. IT-96-21-A, "Appeals Chamber Judgment", 20 February 2001, para. 256.

¹⁰⁷ ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute, 21 March 2016, para.188.

¹⁰⁸ ICTY, *Prosecutor v. Naser Orić*, IT-03-68-T, Judgment of the Trial Chamber, 30 June 2006, para. 312.

¹⁰⁹ ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 188.

¹¹⁰ Case facts, para. 6.

¹¹¹ Ibid.

¹¹² Ibid, para.7.

¹¹³ Ibid, para. 11(b).

¹¹⁴ Ibid, paras 6-7.

¹¹⁵ Ibid, para. 8.

¹¹⁶ Ibid, para. 11.

¹¹⁷ Ibid, paras 8, 12.

¹¹⁸ Ibid, paras 10, 13.

Following what was mentioned above, the Court needs to analyze the element of ‘causality’ between the crimes committed by the subordinates and the superior’s failure to exercise proper control.¹¹⁹ If Mr. Gravus exercised control properly over his subordinates to prevent or repress the commission of crimes, his forces would not continue to commit these atrocities because, as Mr. Brian said in his interview,¹²⁰ they thought that all their atrocities were in accordance with Mr. Gravus’s order to destroy Castirian terrorists. Therefore, the Office of the Prosecutor submits that the crimes committed by the subordinates were the results of Mr. Gravus’s failure to exercise control properly.

III.B. Mr. Gravus had fulfilled the knowledge requirement both as military and non-military superior.

According to Art. 28 (a) and (b) of the Rome Statute, for the command responsibility of a superior to be established, he or she must “either knew or, owing to the circumstances at the time, should have known,”¹²¹ or “consciously disregarded information which clearly indicated, that his or her subordinates were committing or about to commit such crimes.”¹²²

Based on the facts of the case, Mr. Gravus has been a military officer, who took all the three branches of power in Hanatun on 3 November 2015,¹²³ and thus, is clearly considered as the sole source of power in the country when the alleged crimes were committed. In addition, he was the person who created the counter-terrorism campaign, in which he was leading police departments, Special Presidential Guards and security forces.¹²⁴ Thus, the Prosecution submits that Mr. Gravus has been the superior of all persons who played a role in the commission of genocide, and *a fortiori*, is considered as the Commander-in-Chief for all subordinates in the counter-terrorism campaign.

Regarding the knowledge requirement, as mentioned earlier, “knew” element means actual knowledge of a superior that his subordinates were committing or about to commit a crime.¹²⁵ Based on the facts, Mr. Gravus has repeatedly been informed about the situation in Luz and Luzari, and all across Castiria, either by the reports of NGOs such as International Human Rights Defenders, as well as Ms. Jolie, head of the NDS,¹²⁶ which shows that he, owing at the circumstances at the time, was capable to know what has happened in Castiria. Furthermore, the fact that Ms. Jolie did not inform

¹¹⁹ ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 423.

¹²⁰ Case Facts, para. 12.

¹²¹ Rome Statute, Art. 28(a).

¹²² *Ibid.*

¹²³ Case Facts, para. 6.

¹²⁴ *Ibid.*, para. 11.

¹²⁵ ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, paras 429-430.

¹²⁶ Case Facts, paras 12, 13, and Exhibit I.

him about their treatment to civilians in a phone call,¹²⁷ cannot be an indication as to Mr. Gravus lacked such knowledge. To support the fact that Gravus has had such knowledge, heed must be paid to the shared concerns of global community, several countries and organizations such as the EU.¹²⁸ As a clear instance, Mr. Gravus's criticism of UNSC Res. on 15 October 2019¹²⁹ obviously shows that he was well aware of the reports on the situation.

III.C. Mr. Gravus failed to take the necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation. The superior should “have failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission,”¹³⁰ to be considered criminally responsible. Based on the facts of the case, the Prosecution submits that there is not any reference to any criticism, punishment or prevention from Mr. Gravus in respect of those under his control. Moreover, it cannot be understood from Mr. Gravus’s phone call with Ms. Jolie that he had any specific concern about civilians, as there is neither nothing to demonstrate his anxiety about what happened to civilians, nor he had any advice about how to treat them in response to Ms. Jolie. From the Office of the Prosecutor’s perspective, Mr. Gravus’s conversation with Ms. Jolie should be considered as a routine part of his efforts for seeking report about the overall situation in Castiria, and does not prove that he was intended to prevent any of the committed crimes. Moreover, Mr. Gravus has previously called all Castirians as “lying rats”¹³¹ and also, on his call for creation of counter-terrorism campaign, he has mentioned CNF terrorists “and their Castirian supporters” together, both as subject to all necessary measures by security forces;¹³² which clearly proves he has not distinguished between combatants and civilians. The Prosecution also submits that since all the three branches of power were under Mr. Gravus’s control at the time, it is impossible to imagine any “competent authority” in the country to investigate the committed crimes, to realize the conditions mentioned in the Article. For the foregoing reasons, Mr. Gravus shall be held criminally responsible under Art. 28(a)(b).

Prayer for Relief

In accordance with all abovementioned arguments, the Office of the Prosecutor requests the Court to adjudge and declare that: (I) the case falls within the jurisdiction of the Court; (II) the case is admissible before the Court; and (III) Mr. Gravus is to be held criminally responsible under Art. 28(a)(b) of the Rome Statute.

¹²⁷ Case facts, Exhibit I.

¹²⁸ Ibid, para. 16.

¹²⁹ Ibid.

¹³⁰ Rome Statute, Art. 28 (b).

¹³¹ Case facts, Para. 10.

¹³² Ibid, Para 11.