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Team Number 01

**Memorial for the Defence**

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## CONTEXTUAL ELEMENTS OF WAR CRIMES

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### **A. The armed conflict was internationalized by Tleilax intervention.**

1. With Tleilax's support of weapons, True Freman Resistance Army ("TFRA") was able to carry out long-term military operation against Raveen Imperial Force ("RIF").<sup>1</sup> RIF even issued the Operation Desert Tempest aiming at eliminating TFRA. Thus, the armed conflict between RIF and TFRA had been internationalized due to Tleilax's overall control over TFRA.

### **B. The minimum level of intensity did not reach after the sign of Arravis Accord on 27 April 2017.**

2. Non-international armed conflict ends after a peaceful settlement is achieved.<sup>2</sup> The signing of the total ceasefire in 27 April 2017 by TFRA and Ravis ended the armed conflict.<sup>3</sup> Furthermore, the occasional incidents around mining transport did not reach the minimum level of intensity. As a result, there were no existence of a non-international armed conflict after 27 April 2017.

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## FIRST CHARGE

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3. With respect to the crash and death of 14 crew members of the Caladan tankers on 15 January 2015, Mr. Liet Kynes ["Kynes"] shall not bear the individual responsibility under Article 25 (3) (b) for ordering his subordinates to commit the alleged war crime of intentionally directing attacks against individual civilians not taking part in hostilities under Article 8(2)(e)(i) of Rome Statute ("Statute").

### **A. The Crime Is Not Sufficiently Established.**

#### **(a) The crew members were taking direct part in hostilities.**

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<sup>1</sup> Facts [7].

<sup>2</sup> Prosecutor v. Jean-Pierre Bemba Gombo, Trial Chamber Judgment III (2016), [128] ["Bemba 2016"].

<sup>3</sup> Facts [24].

4. To qualify as direct participation in hostilities, a specific act must meet the criteria of threshold of harm, direct causation and belligerent nexus.<sup>4</sup> Without the support of the tankers, the function of the drones will reduce significantly.<sup>5</sup> Therefore, the actions of refueling constituted a significantly integral part of the Operation Desert Tempest, which directly aiming at striking down the military capacity of TFRA.<sup>6</sup> Furthermore, the drones were specifically designated to support Raveen Imperial Force (“RIF”) ground operations against TFRA.<sup>7</sup> As a result, the crew members were qualified as direct participation in hostilities. Besides, the crew members were pilots from Caladan Airforce who were legally targets.

**(b) Our fighters had no intention to attack the crew members in the tankers.**

5. The mental elements consist of the intent and the knowledge of the actors.<sup>8</sup> Accidental result that might contain an aggressive nature could still exclude the action from establishing the intention.<sup>9</sup>
6. The targets, which did not contain any human being at all times, were focused on the drones specifically.<sup>10</sup> Our fighters could not foresee the accidental explosion would occur in the ordinary course of event. Moreover, TFRA fighters could reasonably deemed the tankers and the crew members as military objectives for

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<sup>4</sup> Prosecutor v. Lubanga, ICC-01/04-01/06, Appeals Chamber (2014), [324].

<sup>5</sup> Facts [11].

<sup>6</sup> Facts [10].

<sup>7</sup> *Ibid.*

<sup>8</sup> Rome Statute of the International Criminal Court, Article 30 [“Statute”].

<sup>9</sup> William A. Schabas OC Mria, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford University Press Inc,2010), p.477.

<sup>10</sup> Facts [13].

the constant and intimate military cooperation between Caladan and Ravis.<sup>11</sup> As a result, our fighter had no intention on the alleged crime.

**B. Kynes Is Not Criminally Responsible.**

**(a) Kynes did not intend to order his subordinates to commit the alleged crime.**

7. Ordering refers to the act of a person in a position of authority to convince another to commit an offence.<sup>12</sup> Both the message of “Go forth and blind the Earth destroyers’ eyes in the sky” and the picture of damaged drones from Kynes, indicating his order was specifically targeted on the drones. He mentioned neither the tankers nor the crew members.<sup>13</sup> Moreover, Kynes was not aware of the substantial likelihood that the crime will be committed.<sup>14</sup> Consequently, Kynes shall not bear the responsibility.

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**SECOND CHARGE**

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8. With respect to the attacks on medical personnel of the Raveen Imperial Forces, Kynes shall not bear the responsibility under article 25(3)(b) of the Rome Statute for the alleged war crime of intentionally directing attacks against medical personnel using the distinctive emblems of the Geneva Convention in conformity with law under Article 8(2)(e)(ii) of Statute.

**A. The crime is not sufficiently established.**

**(a) Medical officers lost their protection of the Geneva Convention.**

9. Medical personnel enjoy protection because of their function of providing care

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<sup>11</sup> Facts [7,10,11]; Jean-Marie Henckaerts, Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (Cambridge University Press 2005), p.29.

<sup>12</sup> Prosecutor v. Krstic, IT-98-33-T, Trial Chamber (2001), [601].

<sup>13</sup> Facts [12].

<sup>14</sup> Prosecutor v. Blaškić, IT-95-14-T, Trial Chamber (2000), [437]; Prosecutor v. Blaškić, IT-95-14-A, Appeal Judgement (2004), [42].

for the wounded and sick.<sup>15</sup> However, they will lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy.<sup>16</sup>

10. The purpose of using the go-pills was to enhance RIF soldiers' military capacity for harming TFRA members which constituted acts harmful to the enemy, and outside their humanitarian duties.<sup>17</sup> Thus, they lost their protection.

(b) **The medical officers were conducting human experiment.**<sup>18</sup>

11. The protected status of medical personnel was based on their humanitarian tasks.<sup>19</sup> RIF medical officers dispensed the go-pills to soldiers, then supervised them for adverse reaction.<sup>20</sup> Logs and individual reports were submitted to the chief officer for refinement, which in fact was a human experiment.<sup>21</sup> Such acts were beyond the scope of humanitarian duties.<sup>22</sup>

(c) **TFRA members did not intend to attack medical personnel.**

12. TFRA members reasonably regarded RIF medical officers as legal military target because they had lost their protection. Even if they remained protected, following TFRA leaders' denouncement, TFRA members were reasonably to deem them as legal military target, leading to a mistake of facts.<sup>23</sup> The mistake

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<sup>15</sup> Jean-Marie Henckaerts, Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (Cambridge University Press 2005), p.85.

<sup>16</sup> *Ibid.*

<sup>17</sup> Facts [16, 17].

<sup>18</sup> Facts [16].

<sup>19</sup> Protocol Additional I to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (1977), ["AP I"], Article 8(c).

<sup>20</sup> Facts [19].

<sup>21</sup> *Ibid.*

<sup>22</sup> *Supra* n15.

<sup>23</sup> Facts [21].

of facts negates the intention and shall be a ground of excluding criminal responsibility.<sup>24</sup> Without the intention of attacking the protected medical personnel, the crime did not establish.

**B. Kynes was not criminally responsible.**

**(a) Kynes did not intent to induce his followers murder the medical personnel**

13. Induce and solicit entail the person exerts influence over another person to commit a crime, which have a direct effect on the commission of the crime, and the person is at least aware that the crimes will be committed in the ordinary course of events as a consequence of the realization of the act or omission.<sup>25</sup>
14. The denouncing expression from Kynes were out of religious and humanitarian intention, which contained nothing related to the alleged crime.<sup>26</sup> Furthermore, several TFRA leaders denounced on social media the use of the go-pills. There is no substantial evidence indicating that Kynes' expression had direct effect on the commission of the crime.<sup>27</sup> Besides, the RIF medical officers had lost their protected status. Thus, Kynes did not induce TFRA members to murder any medical personnel. He shall not bear the individual responsibility.

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**THIRD CHARGE**

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15. With respect to the recruitment or use of children by the Red Eagles between 3 June 2017 and 12 June 2018, Kynes shall not bear the command responsibility under Article 28(a) for the alleged war crime of conscripting or enlisting children under the age of fifteen years into armed forces or groups or use them to

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<sup>24</sup> Statute, Article 32(1).

<sup>25</sup> Prosecutor v. Ntaganda, ICC-01/04-02/06, Pretrial Chamber Decision (2014),

[153].

<sup>26</sup> Facts [21].

<sup>27</sup> *Ibid.*

participate actively in hostilities committed by his subordinates under Article 8(2)(e)(vii) of Statute.

**A. The crime is not sufficiently established.**

**(a) RedEagles members did not intend to recruit children under the age of fifteen into armed group.**

16. Enlisting refers to the enrollment on the list of a military body, while conscripting refers to enlist compulsorily.<sup>28</sup> Since the life in Ravis is extremely difficult, inhabitants have no choice but to participate in RedEagles for basic living needs.<sup>29</sup> Besides, the boys wore the different armband from TFRA fighters, which indicated that the boys did not have the combat function within the armed group.<sup>30</sup>

**(b) RedEagles members did not intend to use children under age of fifteen to participate actively in hostilities.**

17. Freman tribes have been historically specialized in training the Raveen Eagles, thus, taking care of Eagles is their daily routine.<sup>31</sup> The only affair that the children carried out was chopping meat for the Eagles,<sup>32</sup> such act was not likely to expose the children to a real danger of becoming a potential target, which was definitely not a behavior participate actively in hostilities.<sup>33</sup>

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<sup>28</sup> The Prosecutor v .Thomas Lubanga Dyilo, ICC-01/04-01/06, Trial Judgment (2012) [607,608] [“Lubanga 2012”].

<sup>29</sup> Facts [5,25,26,27].

<sup>30</sup> Facts [15,29].

<sup>31</sup> Facts[1].

<sup>32</sup> Facts [29].

<sup>33</sup> *Supra* n28 Lubanga 2012, [820].

(c) **RedEagles members had no intention on the alleged crime.**

18. Reflecting on the survival sufferings and the hazardous working conditions, it may be normal to be short and skinny due to the malnutrition.<sup>34</sup> Inhabitants had no choice but to participate in RedEagles, and further resulting in a widespread practice of falsifying identification documents.<sup>35</sup> It was hard to judge the real age objectively. Therefore, they did not intend to recruit or use persons under fifteen to participate actively in hostilities.<sup>36</sup>

**B. Mr. Liet Kynes is not Criminally Responsible.**

(a) **Kynes had no effective control over the RedEagles.**

19. RedEagles was composed of multiple armed bands, one of which was consisted of visiting fighters.<sup>37</sup> Contrary to the RedEagles members, foreign fighters dressed differently, and they could freely return to their home countries.<sup>38</sup> Besides, TFRA members disregard Kynes order targeting on the drones only, whereas, causing the disaster of the tanker.<sup>39</sup> Although Kynes was the leader of Red Eagles, given the release of the video, the commands for demanding the local commander to inspect documentation were not correctly complied with.<sup>40</sup> Consequently, Kynes had no effective control over RedEagles.

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<sup>34</sup> Facts [5,25,27].

<sup>35</sup> Facts [26,27,28].

<sup>36</sup> Statute, Article 30.

<sup>37</sup> Facts [6].

<sup>38</sup> Facts [8].

<sup>39</sup> *Supra* n2 Bemba 2016, [188].

<sup>40</sup> Facts [29,30]; *Ibid*.

**(b) Kynes could be justified for having taken necessary and reasonable measures to discharge his obligation within his material power.**

20. The duty of Kynes to take all necessary and reasonable measures to prevent or repress the crimes committed or to submit the matter to the competent authorities depends on the *de facto* power of the commander.<sup>41</sup>
21. First, the duty to prevent requires the commander to keep the crime from happening or issue orders aiming at bringing the relevant practices into accord with the rules of law.<sup>42</sup> Kynes knew the condition after watching the video while the falsifying identifications had happened very earlier in the mining.<sup>43</sup> Therefore, there was no general information to put Kynes on notice of the possibility of the occurrence of the unlawful acts.<sup>44</sup> Besides, assessing the power of Kynes, even his public speech counts little, Kynes still utilized all possible measures to prevent the potential crime by calling for checking everyone's documentation when they sign up.<sup>45</sup>
22. Next, the duty to repress encompasses the obligation to put down, punish the committing crime, or search for the perpetrators and either bring them before the courts.<sup>46</sup> Since RedEagles were composed of foreign fighters, Kynes has no way to search for the perpetrators who is not under his control.<sup>47</sup> Besides, not until Kynes was aware of the existence of the video did he know the alleged crime.<sup>48</sup>

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<sup>41</sup> *Supra* n2 Bemba 2016, [199].

<sup>42</sup> *Supra* n2 Bemba 2016 [203].

<sup>43</sup> Facts [26].

<sup>44</sup> Bemba 2009, [434]

<sup>45</sup> Facts [30].

<sup>46</sup> *Supra* n2 Bemba 2016 [205,206].

<sup>47</sup> Facts [8].

<sup>48</sup> Facts [30].

Therefore, Kynes could not put down the commission of the crime or search for the perpetrators. Furthermore, due to the rival status between RIF and RedEagles, Kynes could not bring his members before the court.<sup>49</sup> Consequently, Kynes shall not bear the command responsibility.

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<sup>49</sup> Facts [6].

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**PRAYER FOR RELIEF**

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The Defence respectfully requests this Honorable Court to declare that Mr. Liet Kynes is not criminally responsible for:

War crimes under Article 8(2)(e)(i), 8(2)(e)(ii), and 8(2)(e)(vii) of Statute.

**RESPECTFULLY SUBMITTED,**

**THE DEFENCE.**