

**Team Number**

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## **I. NATURE OF THE CONFLICT**

Non-international armed conflicts are armed conflicts between a State, on the one hand, and one or more non-State armed groups, on the other.<sup>1</sup> On 1 May 2014, His Excellency Shaddam II who represented the Kingdom of Ravis announced an official ground and air operation by the Raveen Imperial Forces to put down the militia called True Freman Resistance Army (TFRA).<sup>2</sup> It revealed that the hostilities reached a minimum level of intensity. TFRA was under a certain command structure and have the capacity to sustain military operations, and they possessed organized armed forces. The conflict in the present case is non-international in nature<sup>3</sup> and does not involve the resort to armed force between two or more States.

## **II. CHARGES**

### **A. Kynes Should Be Tried for the War Crime under Article 8(2)(e)(i) of the Rome Statute.**

#### *1. Substantive Elements*

“The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations”,<sup>4</sup> and such protection should be afforded to civilians unless and for such time as they take a direct part in hostilities.”<sup>5</sup> On 15 January 2015, the TFRA downed two tanker aircrafts, killing all 14 crew members onboard. Those members were pilots from the Caladan Airforce, providing air-to-air refueling of the drones to keep them in almost constant circulation. They were not members of the armed forces of the Raveen Imperial Airforce and were only contracted to undertake the task of refueling. They should not be considered as combatants. Even if the TFRA had doubt if the crew on the tank were civilian,

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<sup>1</sup> Common Article 3 to the Geneva Conventions of 1949.

<sup>2</sup> Statement of Agreed Fact, ¶ 10 [hereinafter Facts].

<sup>3</sup> Tadić, Case No. IT-94-1-T, Judgment, ¶ 562 (May 7, 1997).

<sup>4</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts art. 13(1), June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Additional Protocol II].

<sup>5</sup> *Id.* art. 13(3)

they should nevertheless consider the crew civilians.<sup>6</sup>

The defendant might argue that the crew were combatants, not civilians. Yet, they were pilots from the Caladan Airforce, not the Raveen Airforce, but the Caladan Airforce. By definition,<sup>7</sup> they should not be considered as combatants and whether those pilots during the time of the attack, enjoyed civilian protection depends on whether they took direct part in hostilities. In order for an act to qualify as direct participation, there must be a sufficiently close causal relation between the act and the resulting harm.”<sup>8</sup> Those pilots refueled the drones, which were used to detections, not for launching attacks. Therefore, the crew onboard the tanker aircrafts should be considered civilians who did not take a direct part in hostilities, and the TFRA’s attacks against them were in violation of Article 8(2)(e)(i) of the Rome Statute.<sup>9</sup>

## 2. *Criminal Responsibility*

Kynes should be held criminally liable if he ordered, solicited or induced the commission of occurrences or attempts of crimes within the jurisdiction of the court.<sup>10</sup> As the leader of the largest TFRA units, Kynes had the power of ordering and controlling military operations in the movements. On 2 August 2014, Kynes sent a picture with his foot on a downed Ravis drone to members of the Red Eagles. This amounted to clear order to his subordinates specifying the target of the attacks. The picture which later surfaced with him standing over two dead men in Raveen Imperial Forces uniforms further demonstrated his connection with the foreign fighters as well as his knowledge of their actions.

Accordingly, Kynes should be tried for the War crime under Article 8(2)(e)(i) on the basis of Article 25(3)(b) of the Rome Statute.

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<sup>6</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts art. 50(1), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I].

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Rome Statute of the International Criminal Court art. 8(2)(e)(i), Sept. 8, 1954, 209 U.N.T.S. 28.

<sup>10</sup> *Id.* art. 25(3)(b).

## **B. Kynes Should Be Tried for the War Crime under Article 8(2)(e)(ii) of the Rome Statute.**

### *1. Substantive Elements*

According to Article 8(2)(e)(ii) of the Rome Statute, “intentionally directing attacks against medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions” is prohibited. The distinctive emblem should be displayed by medical personnel, and it cannot be used improperly.<sup>11</sup> The term “medical personnel” refers “military or civilian persons who have been formally assigned by a party to a conflict to one of the following purposes: (1) medical purposes strict purpose, the search for, collection, transportation, diagnosis or treatment of the wounded, sick and shipwrecked; (2) the operation or administration of medical units or transports.”<sup>12</sup> The red cross, red crescent, and red crystal are the distinctive emblems that can be used.<sup>13</sup> Although the three emblems were adopted at different points in time by the international community, all have been widely recognized.<sup>14</sup>

RIF medical officers evidently met the definition of medical personnel. First, RIF medical personnel were part of Raveen Imperial Force.<sup>15</sup> Second, besides refining go-pills, treating the soldiers with anaphylactic reaction is part of duty of RIF medical officers.<sup>16</sup> The Defendant might argue that the RIF medical officers in question exceeded their humanitarian duties and undertook acts harmful to the TFRA. However, these medical officers were performing their assigned duties and prescribed medicines that were non-addictive and at most caused mild side effects.<sup>17</sup> Thus, RIF medical officers should regard as medical personnel.

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<sup>11</sup> Additional Protocol II, *supra* note 4, art. 12.

<sup>12</sup> Additional Protocol I, *supra* note 6, arts. 8(c), 8(e).

<sup>13</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 38, Aug. 12, 1949, 75 U.N.T.S. 31 [hereinafter Geneva Convention I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem art. 2, Dec. 8, 2005, 2404 U.N.T.S. 261.

<sup>14</sup> E.g. Germany’s Soldiers’ Manual (2006).

<sup>15</sup> Additional Protocol I, *supra* note 6, art. 8(c)(1).

<sup>16</sup> Facts, ¶¶ 17, 19.

<sup>17</sup> Facts, ¶ 19.

The TFRA directly attacked RIF medical officers with the red crystal,<sup>18</sup> killing to 25 in the period of “Operation Desert Tempest”.<sup>19</sup> Although the Kingdom of Ravis has not ratified Additional Protocol III concerning use of the red crystal,<sup>20</sup> protection afforded to medical personnel displaying such emblems should still be applied to the RIF medical officers for humanitarian reasons.<sup>21</sup>

## 2. *Criminal Responsibility*

According to Article 25(3)(b) of the Rome Statute, Kynes should be held criminally liable if he induces the commission of occurrences or attempts of crimes within the jurisdiction of the court. Inducing a crime means, to influence another person to commit a crime.<sup>22</sup> As the leader of the largest TFRA units,<sup>23</sup> Kynes must understand he exerted significant influence inside the TFRA. Each of his behavior could inspire or be emulated by members.

However, Kynes still warned the medical officers to give up the practices or they will pay in a phone interview broadcast on 17 November 2015<sup>24</sup>. Such inflammatory remarks were sufficient to induce the members to direct attacks against the RIF medical personnel. After the TFRA had claimed responsibility for the first killing, Kynes’s tolerance of such crimes would only further fuel the members’ attack. Accordingly, Liet Kynes should be tried for the war crime under Article 8(2)(e)(ii) on the basis of Article 25(3)(b) of the Rome Statute.

## **C. Kynes Should Be Tried for the War Crime under Article 8(2)(e)(vii) of the Rome Statute.**

### 1. *Substantive Elements*

Article 8(2)(e)(vii) prohibits Conscripting or enlisting children under the age of fifteen

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<sup>18</sup> Facts, ¶ 18.

<sup>19</sup> Facts, ¶ 22.

<sup>20</sup> Annex II to the Statement of Agreed Facts.

<sup>21</sup> JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *supra* note 7, at 79-86 (Rule 25).

<sup>22</sup> Gbagbo, Case No. ICC-02/11-01/11, Decision on the Confirmation of Charges, ¶ 243 (June 12, 2014)

<sup>23</sup> Facts, ¶ 6.

<sup>24</sup> Facts, ¶ 21.

years into armed forces or groups or using them to participate actively in hostilities. *First and foremost, children must not be recruited into armed forces or armed groups.*<sup>25</sup> The term “recruitment” differs from “enlisting and conscripting.” The latter also prohibits accepting voluntary enlistment.<sup>26</sup> The commission of the crime of enlisting or conscripting children under the age of fifteen years continues as long as the children remain in the armed groups or forces.<sup>27</sup> One worker was quoted as saying: “I’m going to join the TFRA soon.”<sup>28</sup> It might seem that these children were not “forced” to join the TFRA. Nonetheless, taking into consideration the conditions of the mines and the *salusa*, the only real options for many children was crime or the TFRA.<sup>29</sup> Under these circumstances, these young children should be deemed as “being conscripted or enlisted” to join the Red Eagles.

With the regard to the element "participate actively in hostilities," the children should participated in combat-related activities.<sup>30</sup> In the footage published by a TFRA member, there was a group of young boys participated in the preparation of the Raveen Eagle attack which is obviously the combat-related activities.<sup>31</sup> Thus, the requisite element is met.

With regard to the element the perpetrator “knew or should have known” that such persons were under the age of 15, the recklessness test should be adopted. Even if Kynes stated that he had made all his commanders inspect everyone’s documentation,<sup>32</sup> he still had the duty to check regularly and carefully to ensure that the identification documents were not falsifying since they were extremely easy to forge.<sup>33</sup> Failure to undertake such inspections demonstrated

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<sup>25</sup> JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *supra* note 7, at 482 (Rule 136).

<sup>26</sup> ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 1380, 1391-93 (Sandoz, Swinarski & Zimmermann eds., 1986).

<sup>27</sup> Lubanga, Case No. ICC-01/04-01/06, Decision on the Confirmation of Charges, ¶ 248 (Jan. 29, 2007).

<sup>28</sup> Facts, ¶ 27.

<sup>29</sup> *Id.* ¶ 28.

<sup>30</sup> Ntaganda, Case No. ICC-01/04-02/06, Decision on the Confirmation of Charges, ¶ 93 (June 14, 2014).

<sup>31</sup> Facts, ¶ 29.

<sup>32</sup> *Id.* ¶ 30.

<sup>33</sup> *Id.* ¶ 26.

recklessness on the part of the defendant and the commanders, showing that they should have known that the individuals were under the age of 15, fulfilling the subjective elements of this crime.

## 2. Criminal Responsibility

Article 28(a) of the Rome Statute imposes criminal responsibility upon the commander who order the commission of the crime. The main factor in determining a position of command is the “actual possession of control over the actions of subordinates”.<sup>34</sup> Commander has the obligation to ensure the prohibition against the use of children and to refrain from recruiting them into armed force.<sup>35</sup> The boys in the footage were distinguished with the adult soldiers, causing the human rights group to claim that TFRA used child soldiers.<sup>36</sup> Even the public knew that these individuals were children only by their behaviors or appearances. Obviously, Kynes did not fulfill the obligation to check the identification and he “should have known” the crime taking place.

Kynes was formerly an outspoken and well-respected leader of the True Freman movement.<sup>37</sup> It reveal the “actual possession” and “effective control” of Kynes. Nonetheless, Kynes failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.<sup>38</sup> Accordingly, Liet Kynes should be tried for the war crime under Article 8(2)(e)(vii) on the basis of Article 28(a) of the Rome Statute.

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<sup>34</sup> Halilovic, Case No. IT-01-48-T, Judgment, ¶ 58 (Nov. 16, 2005).

<sup>35</sup> Additional Protocol I, *supra* note 6, art. 77; JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *supra* note 7, at 501-05 (Rule 142).

<sup>36</sup> Facts, ¶ 27.

<sup>37</sup> *Id.* ¶ 6.

<sup>38</sup> Halilovic, Judgment, ¶ 64 (Nov. 16, 2005).

## **PRAYER FOR RELIEF**

The Prosecutor, thus, respectfully requests this Honourable Court to adjudge and declare that Liet Kynes should be tried under the Statute of the International Criminal Court for war crimes under:

- Article 8(2)(e)(i), with respect to the incident on 15 January 2015, the attack from the foreign fighter;
- Article 8(2)(e)(ii), with respect to attack the medical personnel of the RIF with distinctive emblems; and
- Article 8(2)(e)(vii), with respect to the recruitment or use of children between 3 June 2017 and 12 June 2018 by the Red Eagles.