

**NUREMBERG MOOT COURT 2018**

**TEAM: N49**

**PROSECUTION**

## Content

<b>I. The testimony of Mosel police officer is admissible and has probative value .....</b>	<b>3</b>
<b>II. The case is of sufficient gravity to justify further action .....</b>	<b>3</b>
<b>III.A. Genocide through forced labor under article 6 (c) was committed.....</b>	<b>4</b>
III.A.1 Forced labor was inflicted on the ethnic minorities in Neckar .....	4
III.A.2. The targeted group were the ethnic minorities in Neckar.....	4
III.A.3. The DNP government intended to destroy the substantial part of the ethnic minorities in Neckar.....	4
III.A.4. The forced labor and the other culpable acts were calculated to bring about the physical destruction of the ethnic minorities group in whole or in part .....	6
III.A.5. The conduct took place in the context of a manifest pattern of similar conduct directed against the ethnic minorities group.....	7
<b>III.B. Crime against humanity of enslavement under article 7(1)(c) was committed .....</b>	<b>7</b>
III.B.1. The DNP government exercised powers attaching to the right of ownership over the mining workers by imposing deprivation of liberty primarily in the form of forced labor.....	7
III.B.2. The enslavement is of widespread and systematic attack directed against a civilian population .....	8
III.B.3. The DNP government knew or intended that the enslavement was widespread and systematic attack directed against a civilian population.....	8
<b>III.C. Mr. Balboa is criminally responsible for aiding and abetting genocide and crime against humanity of enslavement under article 25(3)(c) .....</b>	<b>9</b>
<b>III.D. Mr. Balboa is individually responsible for the war crimes of attacking civilian population under article 8(2)(b)(i) and civilian objects under article 8(2)(b)(ii).....</b>	<b>10</b>
III.D.1. Cyber-attacks ordered by Mr. Balboa constituted war crimes.....	10
III.D.2. The crimes took place in the context of and association with an international armed conflict.....	11
III.D.2.a. Nature of the armed conflict in this case is of international character.....	11
III.D.2.b. The crimes were committed in association with an international armed conflict .....	11
III.D.3. Mr. Balboa is criminally responsible for ordering the commission of the crimes under article 25(3)(b).....	12
III.D.4. Alternatively, Mr. Balboa committed the crimes through another person under article 25(3)(a) .....	12

## PRELIMINARY MATTER

### **I. The testimony of Mosel police officer is admissible and has probative value**

1. Hearsay evidence is indirect evidence which is admissible in the ICC,<sup>1</sup> thus any challenge to hearsay evidence may only affect its probative value.<sup>2</sup>
2. The testimony of the Mosel police officer is relevant as it supports information around and links to the existence of a genocidal plan, making the fact more probable.<sup>3</sup> There is no contradict evidence to challenge the reliability and credibility of the testimony because it is from the police authority who obtained statements from the eye-witnesses presented in the mine sites, and because the context in which the evidence was obtained was during the police official duty to identify and question the victims.<sup>4</sup>
3. The testimony corroborates the three non-governmental reports.<sup>5</sup> These reports complement the testimony, making it more relevant, probable, and credible; thus, all these evidences have sufficient probative value when considered in totality.<sup>6</sup>

### **II. The case is of sufficient gravity to justify further action**

4. The crimes against humanity, genocide, and war crimes are of sufficient gravity to justify further action by the court as they are three serious international crimes which happened in large scale and with systematic manner throughout the country, and because of which many people were affected and killed.<sup>7</sup>
5. The Defense challenged that the case is inadmissible and that the arrest warrant is unlawful. However, the Prosecution submits that the admissibility of the case is not a substantive requisite for the issuance of the arrest warrant and it is not a relevant issue to challenge the proper issuance of the arrest warrant.<sup>8</sup>

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<sup>1</sup> 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, 15 June 2009, para.51.

<sup>2</sup> ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the confirmation of charges, 30 September 2008, para.118.

<sup>3</sup> ICC, *Prosecutor v. William Samoeiruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ICC-01/09-01/11, 23 January 2012, para.66.

<sup>4</sup> See *Supra* note 3, para.68. Fact, para.12, 13 and 19.

<sup>5</sup> See *Supra* note 2, para.140.

<sup>6</sup> See *Supra* note 1, para.52.

<sup>7</sup> ICC, *Prosecutor v. Abu Garda*, Decision on the confirmation of charges, ICC-02/05-02/09, 8 February 2010, para.31.

<sup>8</sup> ICC, *The Prosecutor v. Callixte Mbarushimana*, ICC-01/04-01/10, Decision on the Defense Challenge to the Validity of the Arrest Warrant, 28 January 2011, para.10 and 11.

## CRIME CHARGES

### **III.A. Genocide through forced labor under article 6 (c) was committed**

#### **III.A.1 Forced labor was inflicted on the ethnic minorities in Neckar**

6. The DNP government inflicted forced labor and other underlying acts on the Neckar ethnic minorities' members who were forced to work in the mine sites. They were systematically targeted by methods of collection and coercion through a policy of economic stabilization (the Policy)<sup>9</sup> and the Temporary Law on the Limitation of Freedom of Expression (Temporary Law),<sup>10</sup> which aims to impose forced labor sanctions on those who oppose government policy and prohibit any communication with Mosel.

#### **III.A.2. The targeted group were the ethnic minorities in Neckar**

##### *Objective approach*

7. An ethnic group is generally defined as a group whose members share a common language or culture.<sup>11</sup> The ethnic minorities in Neckar speak the common language Mosel,<sup>12</sup> thus, they are within the protected ethnic group.

##### *Subjective approach*

8. Ethnic groups are also recognized by self-identification, identification by the dominant community, and by the perpetrator's recognition that such a group is afforded protection.<sup>13</sup> The ten escapee workers identified themselves as belonging to the ethnic minorities in Neckar.<sup>14</sup> Further, Neckar's ruling government,<sup>15</sup> Neckar's political opponent,<sup>16</sup> and the Federation of Mosel<sup>17</sup> also all recognize them as ethnic minorities in Neckar.

#### **III.A.3. The DNP government intended to destroy the substantial part of the ethnic minorities in Neckar**

9. Genocide crime is established if it is proven on the part of the perpetrators' specific intent, or *dolus specialis*, to produce the prohibited acts against ethnic minorities in Neckar.<sup>18</sup>

##### ***The Policy and the Temporary Law are adopted as part of the mono-ethnicity plan***

10. The specific intent can be inferred from the surrounding facts and circumstances, including but not limited to, the existence of plans and policies to systematically target the victims on account of their identification as a member in a particular group.<sup>19</sup>

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<sup>9</sup> Fact, para.6.

<sup>10</sup> Fact, para.7 and 8.

<sup>11</sup> ICTR, *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment, 2 September 1998, para.513.

<sup>12</sup> Fact, para.3.

<sup>13</sup> ICTY, *Prosecutor v. Clement Kayishema and Obed Ruzindana*, ICTR-95-1-T, Trial Judgment, 21 May 1999, para.98.

<sup>14</sup> Fact, para.12.

<sup>15</sup> Fact, para.14.

<sup>16</sup> Fact, para.5.

<sup>17</sup> Fact, para.16.

<sup>18</sup> See *Supra* note 11, para.498 and 499.

11. The DNP government intended to accomplish the mono-ethnicity plan in Neckar<sup>20</sup> through the adoption of the means and methods outlined in the Policy and the Temporary Law, which were designed solely to compel the ethnic minorities in Neckar to work in the mine sites.<sup>21</sup>
12. In addition to the language barrier and social prejudice, the ethnic minorities falling into the category of a non-qualified group were influenced by the discriminatory statement and deeds of the DNP government,<sup>22</sup> labeling them as traitors and condemning them as a reason for the economic crisis.<sup>23</sup> Every member of the Executive Committee present at the closed meeting possessed reasonable knowledge of the Policy's objective and intended to achieve this ultimate goal through their respective subordinates.
13. The adoption and enforcement of the Temporary Law was to maximize the effect of the plan, coercing and trapping the ethnic minorities, as the DNP could foresee the minorities' violation, given the fact that the minorities were unwilling to support the government platform.<sup>24</sup> Anticipation of potential resistance or opposition was evident since the Policy was, in nature, a disadvantage for them. Furthermore, their situation was vulnerable for the fact that their spoken language could get them arrested for raising suspicion about the potential communication with Mosel.<sup>25</sup>

***The genocidal intent can be reasonable inference drawn from the Policy, the Temporary Law, and the circumstances***

14. The Policy purporting economic stabilization is groundless and unachievable, as Neckar suffered economic instability due to the blockage of goods by Mosel.<sup>26</sup> Unless Mosel lifts the blockage of goods, Neckar cannot benefit from its mineral productions. Additionally, only an ill-intention toward the group would cause the State to target that group through the adoption of an unnecessary and unjust law, resulting in arrests and detention without sufficient shelter and sanitation facilities.<sup>27</sup> The State claimed its objective was to overcome the starvation, and yet they starved the workers in the mine sites, eventually causing the workers' deaths.<sup>28</sup> Thus, the results show that the implementation of the Policy and the enforcement of the Temporary Law does not serve its proclaimed purpose, but is rather a guise to commit genocide acts against the

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<sup>19</sup> ICTY, *Prosecutor v. Jelisić*, IT-95-10-A, Appeal Judgment, 5 July 2001, paras.47-48.; See also ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Appeal Judgment, 19 April 2004, para.34; ICTY, *Prosecutor v. Karadžić*, IT-95-SI18-AR98bis.1, Appeal Judgment, 11 July 2013, paras.80 and 99.

<sup>20</sup> Fact, paras.12, 13 and 19.

<sup>21</sup> Fact, paras.12 and 13.

<sup>22</sup> ICTY, *Prosecutor v. Goran Jelisić*, IT-95-10-T, Trial Judgment, 14 December 1999, para.73.

<sup>23</sup> Fact, para.5.

<sup>24</sup> Fact, para.5.

<sup>25</sup> Fact, para.7.

<sup>26</sup> Fact, para.4.

<sup>27</sup> Fact, para.9.

<sup>28</sup> Fact, paras.10 and 11.

ethnic minorities.

***The ethnic minorities workers in the mine sites are a substantial part of the protected group***

15. When only part of the protected group is intended for destruction, that part must be a substantial part of a protected group.<sup>29</sup> The majority number of the ethnic minorities working in the mines compared to the overall five percent (5%) ethnic minorities in Neckar satisfies the substantial part.<sup>30</sup> The mining sector is a dangerous sector with pre-dominantly able-bodied male workers.<sup>31</sup> Thus, because of the prominence of the number of mine workers to the existence of the overall group, and given they are essential for procreation and protection of their immediate relatives, the mine workers' destruction would lead to an annihilation of the overall group.<sup>32</sup>

**III.A.4. The forced labor and the other culpable acts were calculated to bring about the physical destruction of the ethnic minorities group in whole or in part**

16. The DNP government deliberately calculated methods of destruction to inflict on the ethnic minorities workers.<sup>33</sup> These acts do not immediately kill the members of the group, rather they seek physical destruction or slow death.<sup>34</sup>
17. Forced labor, inhumane living and working conditions, excessive working hours for the purpose of physical exhaustion, and the omission of adequate accommodation, foods, nutrition, medical care and hygienic sanitation facilities are methods of destruction which did not immediately kill the members of the Neckar ethnic minorities group, but eventually sought their physical destruction and ultimately caused them to perish.<sup>35</sup> These acts were organized and systematically conducted in a similar pattern throughout fourteen (14) mining sites by the unrelated perpetrators. Therefore, these culpable acts were thoroughly calculated to destroy the ethnic minorities workers in the mine sites

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<sup>29</sup> ILC Draft Code of Crimes, p. 42, para.8. [Throughout the text, page citations to the International Law Commission (ILC) Report 1996. See also, ICTY, *Prosecutor v. Clement Kayishema and Obed Ruzindana*, Trial Judgement, 21 May 1999, para. 95. See also, See *Supra* note 11, paras.555 and 567.

<sup>30</sup> See *Supra* note 29, para.96.

<sup>31</sup> International Labor Organization, "Providing safe and healthy workplace for both women and men", p.3.

<sup>32</sup> See *Supra* note 19, para.8.

<sup>33</sup> Fact, paras. 9, 10, 11, 12 and 13.

<sup>34</sup> See *Supra* note 11, para.505.

<sup>35</sup> See *Supra* note 13, para.116, See *Supra* note 11, para.505, Nehemiah Robinson, *the Genocide Convention: A Commentary (1960)*, p. 123.

### **III.A.5. The conduct took place in the context of a manifest pattern of similar conduct directed against the ethnic minorities group**

18. The term "manifest pattern" refers to a systematic, clear pattern of conduct in which the alleged genocidal conduct occurs.<sup>36</sup> The methods of destruction took place in the context of a manifest pattern of similar conducts directed against the members of ethnic minorities in Neckar in the fourteen (14) different mine sites non-coincidentally, and the nature of these conducts resulted in physical destruction and death of the able-bodied men of such groups, thus presented a concrete threat to the group existence.<sup>37</sup>
19. In any unlikely event that the Court considers that the ethnic minorities workers in the mine sites were targeted based on political grounds. The Prosecution submits that such persecution escalated to genocide, for it willful and deliberated methods of destruction inflicted on such group and that the consequence of these acts was not merely a dissolution of the group, but a physical destruction of the group.<sup>38</sup>

### **III.B. Crime against humanity of enslavement under article 7(1)(c) was committed**

#### **III.B.1. The DNP government exercised powers attaching to the right of ownership over the mining workers by imposing deprivation of liberty primarily in the form of forced labor**

20. Enslavement is established when the perpetrator exercises power attaching to the right of ownership through forced labor.<sup>39</sup> The right of ownership may form and include forced labor, detention, restrict freedom of movement, and measure taken to prevent any attempted escape.<sup>40</sup>
21. Forced labor occurs when workers are pressured to work without their consent,<sup>41</sup> under long duration, and in inhumane conditions.<sup>42</sup> The consent is absent when the victims are under detention or captivity.<sup>43</sup> Referencing to both the Policy and the Temporary Law of the DNP governments, the consents of both the detainees and the non-qualified group were impossible to negate and make them no choice of employment but to work in the mines. The unspecified duration of mining work and the period of detention from two (2) to four (4) years as imposing

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<sup>36</sup> ICC, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Pre-Trial Decision on the Prosecution's application for a warrant of arrest, Dissent Opinion of Judge Anita Usacka, 4 March 2009, para.19.

<sup>37</sup> See *Supra* note 36, para.123-124. Fact, para.11.

<sup>38</sup> See *Supra* note 22, para.62 and 66. Fact, para.9, 10 and 11.

<sup>39</sup> ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-T, Trial Judgment, 15 March 2002, para. 357; ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment pursuant to article 74 of the statute, 7 March 2014, para.976.

<sup>40</sup> ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment pursuant to article 74 of the statute, 7 March 2014, para.976.

<sup>41</sup> ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-T, Trial Judgment, 15 March 2002, para.359.

<sup>42</sup> ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-T, Trial Judgment, 15 March 2002, para.373.

<sup>43</sup> ICTY, *Prosecutor v. Dragoljub Kunarac*, IT-96-23-T&IT-96-23/1-T, Trial Judgment, 22 February 2001, para.542.

by the Temporary law is sufficient to be considered as enslavement.<sup>44</sup> Further, the detention centers, the guard posts, and the towers were created to confine and to guard them from escaping.<sup>45</sup> The DNP government confined those workers in unsanitary, overcrowded, and inhumane conditions, which led to disease, and required excessive working hours<sup>46</sup>, which eventually led to the increase of the workers' mortality rate at the detention centers and the mining regions.<sup>47</sup> All of these factors constitute deprivation of liberty and fulfill the conditions of forced labor as imposed by the DNP government.

### **III.B.2. The enslavement is of widespread and systematic attack directed against a civilian population**

22. A “systematic act” is an act with an organized plan and by which its scheme is advanced by a common policy in a non-accidental pattern of repetition of similar criminal conduct on a regular basis.<sup>48</sup> The forced labor, inhumane living and working conditions, inadequate food and sanitation, and the excessive working hours<sup>49</sup> were committed in a clear similar pattern in 14 different mine sites<sup>50</sup> systematically as the result of implementation of the Policy and the Temporary Law. “Widespread” refers to the acts directed against large numbers of the civilian population in large or small geographical areas.<sup>51</sup> The act of enslavement was committed against large number of civilian working in detention center and mine sites in Neckar,<sup>52</sup> which was further widespread in the mining regions of Neckar.<sup>53</sup>

### **III.B.3. The DNP government knew or intended that the enslavement was widespread and systematic attack directed against a civilian population**

23. The DNP government knew that by implementing the Policy and enforcing the Temporary law, a large number of people throughout the country would be affected, arrested, and forced to work against their free will in the different assigned mine sites, thus their conducts were undeniably part of a systematic or widespread attack directed against a civilian population.<sup>54</sup>

24. They further collaborated and contributed to its commission through intentional acts or by simply refusing of their own accord to take any necessary measures to prevent the forced labor

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<sup>44</sup> ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-T, Trial Judgment, 15 March 2002, para.377.

<sup>45</sup> Fact, para.10.

<sup>46</sup> Fact, para.8 and 11.

<sup>47</sup> Fact, para.11.

<sup>48</sup> ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07-717, Decision on confirmation of charge, 30 September 2008, para. 397.

<sup>49</sup> Fact, paras.8 and 11.

<sup>50</sup> Fact, paras.10.

<sup>51</sup> ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07-717, Decision on confirmation of charge, 30 September 2008, para.395.

<sup>52</sup> Fact, para 9.

<sup>53</sup> Fact, para 11.

<sup>54</sup> ICC, Elements of Crimes, 7(1)(c), Element 3.

from occurring.<sup>55</sup> Moreover, they would have known such conducts from the three subsequent reports from the non-governmental organizations such as HRO, ILO and WHO which identified the systematic inhumane treatment conditions occurred widely at the fourteen (14) out of existing twenty-one (21) mining sites<sup>56</sup> for a period of almost two years from the beginning of 2016 until late 2017.<sup>57</sup> The DNP government would reasonably have known that the enslavement through forced labor was committed, and they intended such an act to happen, as inferred from their inaction, which led to the workers' deaths in a prolong period of time.<sup>58</sup>

### **III.C. Mr. Balboa is criminally responsible for aiding and abetting genocide and crime against humanity of enslavement under article 25(3)(c)**

25. *Actus Reus*: Mr. Balboa assisted the DNP government in holding a meeting for the adoption of the Policy.<sup>59</sup> He further provided substantial assistance by giving his mine sites where the commission of genocide and enslavement were committed through forced labor and other underlying acts.<sup>60</sup> His omission and non-intervention when he had duty to act as chairman of the executive committee and to report the conducts as the sole owner, chairman and CEO of "High-Tek-Mines" LLC, showed his support and encouragement to these acts being continuously carried out by his people.<sup>61</sup>

26. *Mens Rea*: Mr. Balboa had knowledge and intention that the two crimes were committed.

#### *Knowledge:*

27. Mr. Balboa's presence at the meeting which leading to the adoption of the Policy and the Temporary law is sufficient to infer that he had knowledge about the content of the Policy and the Temporary law to inflict forced labor on civilian which mainly targeted the ethnic minorities in Neckar.<sup>62</sup>

28. Furthermore, he could have been reasonably aware that conduct of force labor, which led to genocide and enslavement, was being carried out at his mining sites after the subsequent non-governmental reports were issued regarding the fact that most of ethnic minorities in Neckar were the majority of workers in the mine sites and the increased mortality rate in the mining region of Neckar due to the deprivation of liberty through forced labor.<sup>63</sup>

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<sup>55</sup> ICTY, *Prosecutor v. Tihomir Blaskic*, IT-95-14-T, Trial Judgment, 3 March 2000, para.257.

<sup>56</sup> Fact, paras.9, 10 and 11.

<sup>57</sup> Fact, paras.6 and 17.

<sup>58</sup> Fact, paras.9, 10 and 11.

<sup>59</sup> Fact, para.6.

<sup>60</sup> See *Supra* note 19, paras.137, 138 and 144.

<sup>61</sup> ICTY, *Prosecutor v. Zlatko Aleksovski*, IT-95-14/1-T, Trial Judgment, 25 June 1999, para.87.

<sup>62</sup> See *Supra* note 19, para.129. Fact, para.13.

<sup>63</sup> Fact, para.9, 10 and 11.

*Intent:*

29. Mr. Balboa as chairman of the Executive Committee of the DNP in the form of the new government claiming that the ethnic minorities in Neckar were traitors and Mosel secret agents.<sup>64</sup> It can be drawn reasonable inference that he intent to let the commission of the crimes to happen.
30. Furthermore, as the sole owner, chairman of the board and CEO of “High-Tek-Mines” LLC which gaining tremendous fortune through free labor,<sup>65</sup> would reasonably infer that he intents the commission of enslavement to be committed.

### **III.D. Mr. Balboa is individually responsible for the war crimes of attacking civilian population under article 8(2)(b)(i) and civilian objects under article 8(2)(b)(ii)**

#### **III.D.1. Cyber-attacks ordered by Mr. Balboa constituted war crimes**

##### *(a) Cyber-attacks constituted as a form of attack*

31. Article 36 of Additional Protocol I (API) requires states to determine the legality of a new weapon, or a method of warfare, before deploying to war, thus indicating the applicability of API to all new weapons and methods of warfare.<sup>66</sup> International Court of Justice (ICJ) further affirmed that any advanced weapons created in the past, present, or in the future are covered by the rules and principles of humanitarian law and all applicable law to the armed conflict.<sup>67</sup>
32. “Attack” within the meaning of war crimes requires material results such as death or serious injury to the body or health,<sup>68</sup> which also extends to attack in the virtual space.<sup>69</sup> Cyber-attack is defined as a cyber-operation that causes physical damage, including injury or death to a person, or damage or destruction to civilian objects.<sup>70</sup> The medical equipment was malfunctioned and damaged by the act of cyber-attack. Its electricity supply, which was essential for the survival and operation of the medical equipment, was also cut off. The result from those unfortunate events has caused forty-five (45) patients deaths.<sup>71</sup> These are sufficient to qualify this cyber-attack as an attack within the meaning of Articles 8(2)(b)(i) and 8(2)(b)(ii).

##### *(b) Cyber-attacks violated principle of distinction and proportionality*

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<sup>64</sup> Fact, para.5.

<sup>65</sup> Fact, para.1, 6 and 7.

<sup>66</sup> Additional Protocol 1, 1977 - Protocol Additional to the Geneva Conventions of 12 August 1949, Article 36.

<sup>67</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996, ICJ, Rep 22, para.86.

<sup>68</sup> ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Decision on the confirmation of charges, 30 September 2008, para.270.

<sup>69</sup> Tallin Manual on the International Law Applicable to Cyber Warfare, 2013, Article 30, Commentary, page 92.

<sup>70</sup> Tallin Manual on the International Law Applicable to Cyber Warfare, 2013, Article 30. See also, ICRC, 31st International Conference of the Red Cross and Red Crescent, IHL and the Challenges of Contemporary Armed Conflicts, Report 31IC/11/5.1.2, 2011, page 37.

<sup>71</sup> Fact, para.15.

33. The principle of distinction requires the belligerent parties to distinguish between civilians and combatants,<sup>72</sup> and between civilian objects and military objects.<sup>73</sup> Cyber-attack in nature cannot distinguish its object of attack once employed. It was directly launched on a hospital, which is no doubt a civilian and protected object,<sup>74</sup> and eventually caused the deaths of forty-five (45) civilian patients.<sup>75</sup>
34. Principle of proportionality requires the damages to be not excessive compared to the concrete and direct military advantage anticipated.<sup>76</sup> A military objective must offer an effective contribution to the belligerent parties.<sup>77</sup> As a member of DNP, Mr. Balboa shared the same view with his government that Neckar ethnic minorities were Mosel's secret agents.<sup>78</sup> The mere fact that the ten (10) workers escaped and provided information about horrific situation in the mine sites of Neckar cannot constitute that they were Mosel's secret agent, and thus as military target,<sup>79</sup> In any event, there was no military advantage gained from the cyber-attack since there was no solid proof indicating that those escapees were Mosel's secret agents, and even in doubt, they must be regarded as civilians and protected object.<sup>80</sup>

### **III.D.2. The crimes took place in the context of and association with an international armed conflict**

#### **III.D.2.a. Nature of the armed conflict in this case is of international character**

35. At all times relevant to these charges, there was an international armed conflict occurring between Neckar and Mosel, 2014–current.<sup>81</sup> Mosel-forces' destruction of Neckar's regional infrastructure indicated the high intensity of this armed conflict.<sup>82</sup>

#### **III.D.2.b. The crimes were committed in association with an international armed conflict**

*(a). The crimes were committed to pursue a military goal*

36. The nexus to armed conflict is established if the perpetrator acted “in furtherance of, or under the guise of the armed conflict,”<sup>83</sup> or to pursue the ultimate military goal.<sup>84</sup> Influenced by the

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<sup>72</sup> Additional Protocol 1, 1977 - Protocol Additional to the Geneva Conventions of 12 August 1949, Art. 51(2).

<sup>73</sup> Additional Protocol 1, 1977 - Protocol Additional to the Geneva Conventions of 12 August 1949, Art. 52(2).

<sup>74</sup> Additional Protocol 1, 1977 - Protocol Additional to the Geneva Conventions of 12 August 1949, Art. 52(1).

<sup>75</sup> Fact, para.15.

<sup>76</sup> Additional Protocol 1, 1977 - Protocol Additional to the Geneva Conventions of 12 August 1949, Art. 51(5)(b).

<sup>77</sup> Additional Protocol 1, 1977 - Protocol Additional to the Geneva Conventions of 12 August 1949, Art. 52(2).

<sup>78</sup> Fact, para.5.

<sup>79</sup> Fact, paras.12 and 13.

<sup>80</sup> ICC, *Prosecutor v. Mbarushimana*, ICC-01/04-01/10, Decision on the confirmation of charges, 16 December 2011, para.148.

<sup>81</sup> Fact, para.3. ICTY, *Prosecutor v. Dusko Tadic*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para.70.

<sup>82</sup> Fact, para.4.

<sup>83</sup> ICTY, *Prosecutor v. Kunarac*, IT-96-23 &IT-96-23/1-A, Judgment, 12 June 2002, para.58.

<sup>84</sup> ICTY, *Prosecutor v. Kunarac*, IT-96-23&, IT-96-23/1-A, Judgment, 12 June 2002, para.59.

on-going armed conflict, Mr. Balboa feared that those ten (10) escapee workers were Mosel's secret agents who could provide Neckar's intelligence to Mosel. Thus, cyber-attack was launched as a military operation to eliminate this threat.

(b). *Mr. Balboa used High-Tek IT Corporation to defense Neckar from outside enemies*

37. If the perpetrator commits the crimes as a part or in context of his official duties, the nexus is established.<sup>85</sup> High-Tek IT Corporation was regarded as a defense mechanism of the country.<sup>86</sup> Mr. Balboa ordered the attack on Mosel's hospital as a state public official to achieve the ultimate military goal.

### **III.D.3. Mr. Balboa is criminally responsible for ordering the commission of the crimes under article 25(3)(b)**

38. *Actus reus*: To be liable, the perpetrator must be in a position of authority, and must use his authority to order the perpetrator to commit the crime.<sup>87</sup> Mr. Balboa possessed authority as the majority shareholder and CEO of High-Tek IT Corporation, and he, himself, explicitly ordered his subordinates to launch the cyber-attack on the hospital, aiming to eliminate the ten (10) escapee workers, whom he identified as the military targets.<sup>88</sup> Thus, his order had direct effect on the commission of the crime.

39. *Mens rea*: The perpetrator must be aware of the substantial likelihood that the crime will be committed as a result of his order.<sup>89</sup> Cyber-attack was launched directly and solely on a computer system of the hospital, which inarguably is a civilian object, and caused civilian population being treated there to die, therefore indicating Mr. Balboa's concrete intent.<sup>90</sup>

### **III.D.4. Alternatively, Mr. Balboa committed the crimes through another person under article 25(3)(a)**

40. *Actus Reus*: To be liable, the perpetrator must use his superior authority over apparatus to commit a crime<sup>91</sup> which is ensured by automatic compliance.<sup>92</sup> As the CEO and a major shareholder of High-Tek IT Corporation, Mr. Balboa was in control over his subordinates

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<sup>85</sup> ICTY, *Prosecutor v. Kunarac*, IT-96-23 &IT-96-23/1-A, Judgment, 12 June 2002, para.59. ICT, *Prosecutor v. Kayishema et al*, ICTR-95-1, Judgment, 21 May 1999, para.175

<sup>86</sup> Fact, para.4.

<sup>87</sup> ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, para.145.

<sup>88</sup> Fact, para.15.

<sup>89</sup> ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, para.145.

<sup>90</sup> Fact, para.15.

<sup>91</sup> ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the confirmation of charges, Pre Trial Chamber I, 30 September 2008, paras.514 and 518.

<sup>92</sup> ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the confirmation of charges, Pre Trial Chamber I, 30 September 2008, para.516.

within the corporation.<sup>93</sup> Control can be illustrated through the way he ordered his subordinates to attack the hospital in cyber operation, and then they automatically carried out his order.<sup>94</sup>

41. *Mens rea*: The perpetrator must carry out the subjective elements of the crimes in which he intends to cause, or is aware of, the consequences.<sup>95</sup> Mr. Balboa intended the crimes to be committed, as he explicitly ordered the commission of the crime.<sup>96</sup>

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<sup>93</sup> Fact, para.1.

<sup>94</sup> ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the confirmation of charges, Pre Trial Chamber I, 30 September 2008, paras.514 and 518.

<sup>95</sup> ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the confirmation of charges, Pre Trial Chamber I, 30 September 2008, paras.527 and 528.

<sup>96</sup> Fact, para.15.

PRAYER FOR RELIEF

The Prosecution respectfully submits that there are sufficient evidences to establish “substantial grounds to believe” that the crimes were committed. We respectfully request the Court to confirm the charges of Genocide, Crimes against humanity and War Crimes.

Respectfully submitted,  
Counsel for the Prosecution