

September 2005

## First Annual International Criminal Court Moot Competition: Best Memorial for Defense

Louisiana State University Law Center

Follow this and additional works at: <https://digitalcommons.pace.edu/pilr>

---

### Recommended Citation

Louisiana State University Law Center, *First Annual International Criminal Court Moot Competition: Best Memorial for Defense*, 17 Pace Int'l L. Rev. 227 (2005)

DOI: <https://doi.org/10.58948/2331-3536.1147>

Available at: <https://digitalcommons.pace.edu/pilr/vol17/iss2/4>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace International Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact [dheller2@law.pace.edu](mailto:dheller2@law.pace.edu).

**IN THE  
INTERNATIONAL CRIMINAL COURT**

---

**Prosecutor**

**v.**

**Soldier Nationals of Katonia and Ridgeland**

---

**MEMORIAL FOR DEFENSE**

---

The Office of Defense Counsel  
Louisiana State University Law Center  
John Adcock  
Kelly Polk  
Kathryn Sheely

---

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	230
PREFACE .....	231
STATEMENT OF FACTS .....	232
I. DEFENDANTS CANNOT BE PROSECUTED FOR THESE CRIMES WHEN THERE IS NO EVIDENCE THAT THEY COMMITTED THESE CRIMES EXCEPT INNUENDO FROM AN INVESTIGATION THAT IS UNRELIABLE AND WHOLLY INCOMPLETE .....	234
A. <u>No Evidence from this Investigation Links             the Defendant Pilots to the July 20th or             the July 10th Bombings Save that they             were in the Wrong Place at the Wrong             Time.</u> .....	234
B. <u>No Evidence from this Investigation Links             the Defendant Military Police Officers to             the July 10th Raids Where Property was             Stolen, People were Detained and Civilians             were Tortured Since the Prosecution has             not Provided all the Facts to this Court....</u> .....	236
II. THE AGREEMENT BETWEEN VINELAND AND KATONIA AND, A UNITED NATIONS SECURITY RESOLUTION PRECLUDE SURRENDER OF THE DEFENDANTS AND THEIR PROSECUTION IN THE ICC UNDER ARTICLE 98 OF THE ROME STATUTE AND INTERNATIONAL NORMS OF LAW .....	238
A. <u>The UN Security Council Expressly             Exempts Ridgeland's and Katonia's Troops             from Prosecution Under the Rome Statute .</u> .....	238
B. <u>The Three Katonia Pilots Fit Squarely             Within the Vineland/Katonia Agreement...</u> .....	240
C. <u>The Three Ridgeland Pilots and Four             Military Officers are Protected by the             Article 98 Agreement</u> .....	241
III. DEFENDANTS DID NOT COMMIT CRIMES AGAINST HUMANITY UNDER THE ROME STATUTE .....	242

A. <u>The Aerial Bombing Attacks by Defendant Paratroopers were not Directed Against a Civilian Population</u> .....	242
B. <u>The Aerial Bombing Attacks by Defendant Paratroopers were Neither Widespread nor Systematic</u> .....	244
C. <u>Defendants Did Not Have Knowledge that they were Bombing Civilians Areas</u> .....	244
IV. AERIAL ATTACKS BY DEFENDANT PARATROOPERS DO NOT SATISFY THE ELEMENTS OF WAR CRIMES.....	245
A. <u>The Bombings did not Occur During an International Armed Conflict</u> .....	245
B. <u>The Charges against Defendants Involving the Impairment of Liberty of any Kind do not Withstand any Scrutiny</u> .....	246
C. <u>Defendants did not Torture any of the Alleged Detainees</u> .....	247
D. <u>Defendants did not Pillage, Destroy or Target Civilian Property</u> .....	247
CONCLUSION .....	248

## TABLE OF AUTHORITIES

### INTERNATIONAL TREATIES

Agreement Between the Government of Katonia and the Government of Vineland Regarding the Surrender of Persons to the International Criminal Court, Katonia-Vineland, Aug. 1, 2002  
S.C. Res. 1234, U.N. Doc. S/RES/1234 (July 12, 2002)  
Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331

### ROME STATUTE

Rome Statute of the International Criminal Court, July 17, 1998, 37 I.L.M. 999

Article 4  
Article 15  
Article 10  
Article 21  
Article 30  
Article 64  
Article 98

### ELEMENTS OF CRIMES

Elements of Crimes, ICC-ASP/1/3 (2002)

Article 7(1)(a)  
Article 7(1)(d)  
Article 7(1)(e)  
Article 7(1)(f)  
Article 8(2)(a)  
Article 8(2)(a)(vii)-1  
Article 8(2)(a)(vii)-2  
Article 8(2)(b)(xvi)(4)

### OTHER AUTHORITIES

Prosecutor v. Tadic, Case No. IT-94-1-T, ¶ 70 (May 7, 1997)  
Jeffrey S. Dietz, Comment, Protecting the Protectors: Can the United States Successfully Exempt U.S. Persons from the International Criminal Courts with U.S. Article 98 Agreements?, 27 Hous. J. Int'l L. 137 (2004)

## PREFACE

1. UN peacekeepers were taken from a police station by a mob acting on a rumor about their involvement in raids of civilian homes. R. ¶¶ 11, 11(a). The remaining Defendants, also UN peacekeepers, were seized by ANVA insurgents after they happened to land in a marsh in the area where bombing occurred. R. ¶ 11. These Defendants were handed over to ANVA forces intent on disrupting the fledgling democracy in Vineland and hoarding oil revenues from that country's northern region. R. ¶ 2. Consequently, ANVA threatened the peacekeepers with summary execution without any evidence that they were involved in the unfortunate deaths of innocent civilians, or other crimes alleged in this tribunal. R. ¶¶ 3, 11, 12. Such was the circumstances under which the Defendants herein, Ridgeland and Katonia soldiers, were surrendered to the International Criminal Court. Given the disruptive and coercive influences surrounding their surrender, the Defendants' appearance in the ICC does not comport with the Rome Statute's guarantee that trials in the ICC be conducted "with full respect for the rights of the accused." Rome Statute of the International Criminal Court art. 64(2), July 17, 1998, 37 I.L.M. 999, 1037 [hereinafter Rome Statute]. In the Trial Chamber, the Court should consider the impropriety of the Defendants' surrender in determining whether jurisdiction lies in this court or in a proper domestic court.

2. When the crimes herein were allegedly committed, the UN-VINE troops were acting in concert with and under direct orders as UN peacekeepers. R. ¶ 1. In so doing, they sought to root out ANVA, which was intent on disrupting democracy in the area. Due to the unfortunate consequences, borne out of the retaliation against ANVA and other insurgent group raids on UNVINE forces, a civilian mob seized the Defendants and turned them over to ANVA. R. ¶ 11. Katonia and Ridgeland insisted that their troops be released immediately and threatened military action if they were held captive any longer. R. ¶ 12. ANVA's subsequent surrender of the Defendants in order to prevent their own annihilation was, at the very least, completely coercive and is thus a mockery of ICC's guarantee of "enhancing international cooperation," through "effective prosecution." Rome Statute pmbl. The inevitable consequence of

their surrender removes peacekeepers from the war torn region and raises the spectre, voiced just months before in the United Nations, that "others might use the [ICC] for political reasons to investigate or prosecute its soldiers." R. ¶ 3. This Court should correct the injustice done to these peacekeepers and decline jurisdiction for the reasons stated below.

### STATEMENT OF FACTS

3. In January 2002, the UN Security Council authorized the deployment of 500 military and 600 civilian personnel to the Vineland region. R. ¶ 1. At the time, a nascent government was apprehensively surviving in Vineland after more than four years of continuous fighting in the region. *Id.* The Vineland government and three ethnic groups had only recently signed a peace agreement wherein each side agreed to form a democratic coalition government whose power would be shared by all ethnic groups in the region. *Id.* In this context, the mission of the UN peacekeepers, who are presently the Defendants in this court, was to "verify cessation of hostilities, to set up a security zone for civilians and refugees, and to make preparations for the forthcoming elections in the various regions." *Id.*

4. The UN Security Council sought to renew peacekeeping efforts in July 2002. R. ¶ 3. Such discussions were conducted alongside member nations' consideration about whether to enter into the ICC's jurisdiction. *Id.* Some countries were concerned that "others might use the new Court for political reasons to investigate or prosecute its soldiers." *Id.* As a result, the Security Council unanimously passed Resolution 1234 which granted a twelve-month exemption by the ICC to Vineland peacekeepers taking part in UN Peacekeeping operations. S.C. Res. 1234, ¶ 1, U.N. Doc. S/RES/1234 (July 12, 2002) [hereinafter Res. 1234]. At the time, the only countries participating in these peacekeeping efforts were Ridgeland, Vineland and Katonia. R. ¶ 1.

5. In June 2002, ANVA, an insurgent group from Vineland's northern region, broke away from the coalition government because of dissatisfaction with the lack of ANVA seats in the new government as well as the paucity of oil revenue shares it received from the northern region. R. ¶ 1. In attempts to ward off

armed groups who attacked UNVINE forces July 10, 2002, Katonia and Ridgeland launched a 10-day bombing campaign in the area of the attacks. R. ¶ 6. These were in response to insurgent groups attacking UNVINE troops in the northern region near Bridgetown. *Id.* Press reports indicated that the attack was paid for by “foreign oil companies interested in keeping the UN peacekeepers out of the region.” R. ¶ 5. In order to ferret out members of this clandestine insurgent group, UNVINE members from both countries cordoned off the surrounding areas and conducted searches in order to find insurgents who were connected to any group who attacked UNVINE. R. ¶ 6. In this effort, they detained about 50 men and 20 boys to determine if insurgents were in their ranks. *Id.* It was reported that four of them were tortured in another isolated area of the camp and one of them died of a heart attack. *Id.* The record does not indicate the person(s) who perpetrated the torture nor does it indicate the degree of injury to the victims. The record, however, demonstrates that several ANVA training camps were destroyed and many insurgents were killed. *Id.* Paratroopers, it is reported, stole personal property from houses during the searches. *Id.*

6. On July 20, 2002, Katonia and Ridgeland ordered their paratroopers to bomb ANVA headquarters. R. ¶ 10. In doing so, Katonia and Ridgeland acted on Vineland intelligence reports about the headquarters’ location. *Id.* This bombing operation destroyed three villages, killing three hundred civilians and seriously injuring 550 more. *Id.* On the same day, ANVA captured three Katonia and two Ridgeland pilots whose planes landed in a nearby marsh due to a malfunctions in the planes. R. ¶ 11. Without any evidence linking them to the bombings, ANVA believed that the pilots were engaged in the bombing operations that resulted in the deaths of civilians and accused them of such. *Id.*

7. After the bombing campaign ended, 100 people stormed the local police station where four Ridgeland military police were stationed as trainers and consultants to the local police. R. ¶ 11. Four of the police were “recognized” by women in the mob as men who took their husbands and sons. R. ¶ 11(a). These four were taken as prisoners and handed over to ANVA insur-



gents who had just captured the five pilots accused of the aerial bombing raids. R. ¶ 11(b). This appeal follows.

## ARGUMENT

### I. DEFENDANTS CANNOT BE PROSECUTED FOR THESE CRIMES WHEN THERE IS NO EVIDENCE THAT THEY COMMITTED THESE CRIMES EXCEPT INNUENDO FROM AN INVESTIGATION THAT IS UNRELIABLE AND WHOLLY INCOMPLETE.

8. For there to be jurisdiction in the ICC, there must be at least some evidence that the Defendants herein committed the crimes charged. Article 15 of Rome Statute states that a prosecutor may initiate investigations *proprio motu*. Here the prosecution either has not done so or has not produced evidence of doing so. If the prosecutor concludes there is a reasonable basis to proceed with an investigation, he shall submit this to the Pre-Trial Chamber for authorization of an investigation. Rome Statute art. 15(3) at 1011; Clarification 8/12/05. In either case, we do not know who exactly is charged or what they are charged with. Consequently, there is no evidence against Defendants and jurisdiction in the ICC cannot follow.

#### A. No Evidence from this Investigation Links the Defendant Pilots to the 20 July nor the July 10th Bombings Save that they were in the Wrong Place at the Wrong Time

9. No evidence suggests that the pilots were involved in the July 20th bombing campaign that killed civilians. (In making this argument, Defendants in no way concede that the charges involving the bombing of civilian areas are meritorious. Defendants make this argument based on their perceptions of what they anticipate the charges will be given the shabby record before this Court.) While there is evidence that some Katonian and Ridgeland paratroopers were in the area, there is no evidence that the Defendants participated in the raids. The only relevant points are purely circumstantial – that three Katonia and four Ridgeland pilots landed in a nearby marsh the day of the bombings in question. R. ¶ 11. There is no indication that

they were even flying in a plane capable of dropping bombs. Indeed, there is no evidence that these pilots dropped any bombs on any civilians nor is there any evidence to indicate that these pilots dropped any bombs whatsoever. The prosecution has presumably done its investigation pursuant to Article 15. Yet, many questions remain about the circumstances of this bombing campaign. On this scarce record, Defendants cannot be charged with such serious crimes as war crimes and crimes against humanity.

10. There are still many reasonable hypotheses of innocence on this Record that exculpate the Defendants of this bombing. We are not told whether the prosecution investigated the reasons the pilots were in the area. Were they humanitarian or sinister? The Record does not tell us. The pilots could have been bringing humanitarian aid to civilians. They could have been delivering supplies to UNVINE troops in the area. They could even have been scouting the ground to ascertain the exact location of ANVA headquarters – the target of the bombing. Since the evidence does not exclude such hypotheses of innocence, the serious charges in this case must be dismissed. There is no probable cause, reasonable suspicion or reliable evidence that these pilots were in fact implicated in any of the charged offenses. Instead, there is only unreliable and incomplete evidence that doesn't meet this Court's standards of acceptable evidence. The Defendants' planes simply crashed at wrong place and at the wrong time.

11. There is no evidence linking the Defendants to the ten-day bombing campaign, which began 10 July 2002. This campaign, the Defendants concede, caused severe hardship to the civilian population, principally ruining livestock and destroying farms. However, no indication exists on this Record that the Defendants were in any way linked to this particular bombing. The record is barren of any indication of whether the crash site where Defendants were captured was anywhere near the area of the ten day bombing campaign. The Record does not tell us how great a distance separates the area of the ten day bombing campaign from the site of the ANVA headquarters raid. Hence, there is no evidence to demonstrate that the Defendants were anywhere near the area of the ten day bombing campaign when they were captured in a swamp in the area of the ANVA head-

quarter raid. Nevertheless, as they anticipate, Defendants stand charged of crimes premised on unreliable evidence of their connection to the bombing campaign, a tenuous connection at best. For these reasons, this Court must dismiss the charges against them.

B. No Evidence from this Investigation Links the Defendant Military Police Officers to the July 10th Raids Where Property was Stolen, People were Detained and Civilians were Tortured Since the Prosecution has not Provided all the Facts to this Court

12. The Ridgeland military police officers are also tenuously linked to the raids in question. This Court is aware that the military police officers were captured by a mob in a police station. This occurred when a few in the mob stormed a local police station upon rumors that four military police officers who took part in the raid were stationed there. R. ¶ 11(a). The Prosecutor will contend that members of the mob “recognized” these military police officers as having taken part in the kidnapping of their husbands and sons. However, the Record does not read this way. The prosecution describes a mob, one hundred strong, who: “stormed a local police station where *it was known* that four Ridgeland military police, who had taken part in the earlier house-to-house searches, were stationed as trainers and consultants to the local police force.” R. ¶ 11. (emphasis added). Such innuendo is not enough to be charging UN peacekeepers like these military police officers with such serious crimes as is the Prosecutors’ wont.

13. There was no credible reason for the mob to descend on the police station where four of the Defendants were captured. There was only a rumor that “it was known” that these four officers who had taken part in the searches were stationed as consultants to the local police force. R. ¶ 11. Further, the prosecution failed to inform the Court of the nature of the property that was stolen. If knives, guns or grenades were stolen, such confiscation would be absolutely legal since it would be well within the mandate of the UN mandate under which Defendants were acting. See R. at 1.

14. There is also no indication that these four officers had anything to do with the torturing of four people in a separate area of the camp cordoned off by paratroopers. We are only told that these people were tortured. We are not told whether they were “in the custody or under the control of the perpetrator” which the Rome Statute demands that the prosecution prove. Assembly of State Parties to the Rome Statute of the International Criminal Court, 1st session, 3-10 Sept. 2002, Part II.B. Elements of Crimes, ICC-ASP/1/3, art. 7(1)(f)(2) (2002) [hereinafter *Elements*]. In addition, we are also not told about whether the prosecution determined whether this torture was “inherent in or incident to, lawful sanctions” which the Rome Statute recognizes as a defense. *See* *Elements* art. 7(1)(f)(3) Most importantly, there is no evidence to indicate that the Defendants were the perpetrators of these crimes. The sum total evidence of the crime of torture is provided by the record which states that “[t]hese detainees were taken to a detention compound where they were observed in order to determine if there were any insurgents amongst them. Four of the men were tortured in an isolated area of the camp where there were no civilian witnesses.” R. ¶ 6. Such scant evidence does not support a charge of the crime against humanity of torture where it must be proved that the tortured persons were the in custody of the perpetrator and the torture was not incidental to lawful sanctions. *Elements* art. 7(1)(f)(2)-(3). Furthermore, this evidence does not tell us the reasons for this torture, a requirement to prove the war crime of torture. *See* *Elements* art. 8(2)(a)(ii)-1(2) (“...for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reasons based on discrimination of any kind.”) In summation, the evidence provided falls far short of providing this Court with enough evidence to proceed with these charges. Thus, they must be dismissed.

II. THE AGREEMENT BETWEEN VINELAND AND KATONIA AND, A UNITED NATIONS SECURITY RESOLUTION PRECLUDE SURRENDER OF THE DEFENDANTS AND THEIR PROSECUTION IN THE ICC UNDER ARTICLE 98 OF THE ROME STATUTE AND INTERNATIONAL NORMS OF LAW.

15. Vineland and Katonia entered into an agreement that prevents the surrender of their troops to the ICC. In 2002, the UN Security Council expressly exempted Ridgeland and Katonia troops from prosecution in the ICC by UN Security Resolution 1234. The Resolution was intended to give immunity to UN peacekeepers in the region. Under these agreements, and given the circumstances of the Defendants surrender, jurisdiction in this court would be offensive to international norms. Therefore, the Defendants here should not be prosecuted in the ICC.

A. The UN Security Council Expressly Exempts Ridgeland's and Katonia's Troops from Prosecution Under the Rome Statute.

16. The UN Security Council passed Resolution 1234 with respect to the UNVINE peacekeeping efforts and requested that the International Criminal Court,

If a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decide otherwise.

Res. 1234 ¶ 1. The Security Council further expressed its intention to extend this resolution "each July 1" for additional years "as long as may be necessary." Res. 1234 ¶ 2. Therefore, any UN forces within Vineland during this period are exempt from "investigation or prosecution" from acts occurring during this time period. Res. 1234 ¶ 1. Forces from Ridgeland and Katonia who were participating in UN exercises to combat forces such as ANVA fit squarely within this protection.

17. Immunizing UN forces from prosecution in circumstances such as these is consistent with a policy of providing UN forces leeway in dealing with rebel insurgent forces – like the ANVA

group in the case at bar. Such policy substantiates an inference that the Security Council intended to extend Res. 1234's effects past July 2003. The intention is expressed in the text of the resolution which reads: "[The Security Council] *[e]xpresses* the intention to renew the request in paragraph 1 under the same conditions each 1 July for further twelve-month periods for as long as may be necessary." Res. 1234 ¶ 2. This Court should bear in mind that the agreement arose in response to Katonia's concern that "others might use the new Court for political reasons to investigate or prosecute its soldiers." R. ¶ 3. As a result, the UN Security Council passed 1234 to grant soldiers immunity from prosecution in the ICC in order to prevent the fulfillment of Katonia's threat: "that it would not participate in this or other UN peacekeeping missions." *Id.* Hence, this Court should recognize the intention expressed in the body of the Resolution and effectuate Resolution 1234 as to bar the prosecution of soldiers from Katonia and Ridgeland in this Court.

18. The Ridgeland and Katonian Defendants were acting under the auspices of the UN and therefore fit squarely within Resolution 1234. Thus, they are exempt for the ICC's jurisdiction. The UN Security Council, in January 2002, authorized UNVINE to increase its deployment to Vineland to "verify cessation of hostilities, to set up a security zone for civilians and refugees, and to make preparations for the forthcoming elections in the various regions." R. ¶ 1. To ensure the attainment of these goals, the UN requested member States "to contribute forces, civilian personnel and equipment to UNVINE in order to carry out the mandate." *Id.* As a result, "Ridgeland and Katonia committed and deployed soldiers and paratroopers to the UNVINE mission in Vineland." *Id.* Hence, during the time in question, Ridgeland's troops were always acting in furtherance of a UN peacekeeping mission at the UN's express invitation. Thus, when armed groups attacked UNVINE forces outside Bridgetown on July 10, 2002, Ridgeland's response of sending "an additional 200 paratroopers to assist their soldiers," R. ¶ 6, was in furtherance of effectuating a specific UN goal of "set[ing] up a security zone for civilians and refugees." R. ¶ 1. Therefore, jurisdiction cannot follow.

B. The Three Katonia Pilots Fit Squarely Within the Vineland/Katonia Agreement.

19. Katonia and Vineland entered into an agreement that prevents the surrender of Katonia's troops to the ICC for prosecution. The agreement states:

When the Government of Vineland extradites, surrenders, or otherwise transfers a person of the other Party to a third country, Katonia will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent expressed consent of the Government of Katonia.

Agreement Between the Government of Katonia and the Government of Vineland Regarding the Surrender of Persons to the International Criminal Court, Katonia-Vineland, art. 4, Aug. 1, 2002. Katonia never gave any such consent. This agreement is consistent with Article 98 of the Rome Statute regulating such agreements. The first section of that article reads as follows:

The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

Rome Statute art. 98(1) at 1059. Here, the surrender of Katonia's troops would cause Vineland to "act inconsistently with its obligations under international law," in that such surrender would violate the agreement between Vineland and Katonia. *Id.*

20. The ICC jurisdiction complements jurisdiction of the countries with which it is a signatory. Rome Statute pmb. at 1002. The Rome Statute contemplates such agreements. *Id.* Furthermore, any country that is a party to the Rome Statute can refuse to surrender under such agreements if the ICC does not provide proper constitutional safeguards for criminal Defendants. While a Party State to the Rome Statute has an obligation not to defeat the object and purpose of the Rome Statute by providing impunity to those accused of Rome Statute crimes, the Party State does not defeat that object and purpose by entering into non-surrender agreements in accordance with Article 98. See Jeffrey S. Dietz, Comment, Protecting the

Protectors: Can the United States Successfully Exempt U.S. Persons from the International Criminal Courts with U.S. Article 98 Agreements?, 27 Hous. J. Int'l L. 137, 156-57 (2004).

21. Given that the surrender of the Katonia soldiers would violate the Rome Statute, prosecution after a surrender that was in violation of international law would compound the injury. Hence, to protect against an internationally violative surrender, this Court should not prosecute Katonian troops. The Rome Statute cannot be read to undermine the purpose of Art. 98 agreements, for which the Statute itself provides. One cannot read the Rome Statute, because of an omission of the word "prosecution," as prohibiting illegal surrender but allowing prosecution that follows from an illegal surrender. Any such interpretation would be untenable and ICC jurisdiction cannot follow.

C. The Three Ridgeland Pilots and Four Military Officers are Protected by the Article 98 Agreement.

22. Article 98 of the Rome Statute grants immunity to Ridgeland's troops since it is an extension of the arguments occurring in the Security Council at the time of its passage concerning the immunity of UNVINE troops in general. See R. ¶ 3. Article 98(2) of Rome Statute reads:

The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender. Rome Statute art. 98(2) at 1059.

23. The Article 98 agreement reflects a developing international norm wherein States which send in troops as part of an UN peacekeeping mission do not become subject to ICC jurisdiction if they have not become signatories to the Rome Statute. Article 98 of the Rome Statute, UN Security Council Resolution 1234 and the Article 98 agreement between Katonia and Vine-land reflect this international norm.

24. International norms are controlling on the ICC. Article 21 of the Rome Statute on Applicable Law states that when a stat-



ute, the elements of a crime and its rule of procedure are not available in a particular instance, “[t]he court shall apply: . . . In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict. Rome Statute art. 21(b) at 1015. This being the case, the Article 98 agreement is binding on all states. International norms are laws according to the Vienna Convention. Vienna Convention on the Law of Treaties art. 38, May 23, 1969, 1155 U.N.T.S. 331 (“[n]othing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.”). *Cf.* Rome Statute art. 4(1) (“The Court shall have international legal personality. It shall have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.”). Therefore, jurisdiction in this matter cannot stand.

### III. DEFENDANTS DID NOT COMMIT CRIMES AGAINST HUMANITY UNDER THE ROME STATUTE.

25. Defendants’ actions, even cast in the worst possible light, do not fit the elements of crimes against humanity as defined by Article 7 of the Rome Statute. Defendants’ crimes were not directed against a civilian population, “committed as part of” or “intended the conduct to be part of a widespread or systematic attack against a civilian population,” or committed with knowledge of the attack. Elements art. 7(1)(a). Hence, the crimes against humanity charges cannot stand and jurisdiction in this Court cannot follow.

#### A. The Aerial Bombing Attacks by Defendant Paratroopers were not Directed Against a Civilian Population.

26. Pursuant to a UN objective, on July 20th 2002, Defendants sought to bomb the headquarters of ANVA, “an insurgent group from the northern region” of Vineland. R. ¶ 1. The bombing campaign was developed with intelligence reports and aimed to weaken ANVA forces that were destabilizing Vineland and thwarting attempts made towards democracy in the country. *See* R. ¶¶ 1-2. The bombing campaigns were also begun amid the overriding aim to fulfilling the January 2002 objectives of

the UN Security Council and to limit the ability of foreign oil companies to discourage the UN from maintaining peace in the region. See R. ¶ 5; Elements art. 7(1)(a)(2). The surrounding circumstances should be taken into account by the Court in determining whether the Defendants had the requisite intent. The Record clearly shows that civilians were indeed killed by these bombings. However, viewed in light of the above factors, the peacekeepers here never had the *intent* to bomb civilians.

27. This bombing campaign was directed at an area of haven to insurgents who were attacking UNVINE forces, not at a civilian target. Unfortunately, civilian deaths will always be a part of violent conflict. Defendants were attempting to “verify cessation of hostilities” and stop ANVA from disrupting the peace pursuant to a UN peacekeeping mission. R. ¶ 1. The UNVINE bombing campaign was not directed against a civilian population but at ANVA headquarters. The focus of the bombing exculpates the Defendants herein since UNVINE targeted an insurgent group and not civilians.

28. The bombing campaigns at issue should be viewed in light of other bombing campaigns roundly condemned in modern warfare. Consider the bombing operations at Dresden during the Second World War where 200,000 civilians were killed in two days, or the Blitzkrieg where Nazi’s specifically targeted a civilian population in the London area. Such bombing operations, known now as carpet bombing, where forces seek to bomb large areas aiming to completely destroy an entire region. Many infamous examples prove that such bombings have targeted civilians in order to demoralize the enemy. For instance, the carpet bombing at Guernica during the Spanish Civil war produced close to 2,000 civilian casualties. During the Second World War, the blitz produced 43,000 deaths throughout the United Kingdom. Since in the case at bar the bombing campaigns are qualitatively different from such atrocities, they do not fall into this category of bombing deserving of criminalization. Here, we are dealing with UN peacekeepers seeking to protect democracy in the region. This is quite different from the Nazi’s deliberately dropping bombs on civilians. Hence, this Court should dismiss the charges.

B. The Aerial Bombing Attacks by Defendant Paratroopers were Neither Widespread nor Systematic.

29. Bombings raids conducted by Katonia and Ridgeland were done to discourage insurgent forces from the rampant killing of soldiers who were trying to effectuate UN mandates. These particular bombing operations were specifically directed at enemy headquarters. R. ¶ 10. Hence, they were not widespread in the sense that they were directed against a multiplicity of victims. There was only one intended victim here – the ANVA headquarters. Defendants concede that civilian deaths are tragic. However, blame for such horror rests solely on the backs of those who do not want peace in the region, not UN peacekeepers, the group with the objective at stabilizing the region.

C. Defendants Did Not Have Knowledge that they were Bombing Civilians Areas.

30. Defendants attacked ANVA headquarters based on the intelligence reports provided by the government of Vineland.” R. ¶ 10. The target was chosen because the insurgent group ANVA was located there and not because innocent civilians lived there. Defendants therefore did not “mean to engage in the conduct,” as alleged. Rome Statute art. 30(2)(a) at 1018, nor were they “aware that [civilians would be killed] in the ordinary course of events.” *Id.* art. 30(2)(b) at 1018. Therefore, when evaluating the *intent* of the Defendants in their bombing campaign, there is nothing to support a contention that they were aiming at harming civilians. Their intent was to cripple the enemy by bombing a military target.

31. Even assuming *arguendo* that the intelligence reports were incorrect or unreliable, it is important to note that the Defendants chose the bombing targets based on those reports. We can infer that they intended the bombing to maximize ANVA casualties and damage to their headquarters. Such premeditation does meet Article 30’s requirement that one have “awareness that a circumstance exists or a consequence will occur in the ordinary course of events.” Rome Statute, art. 30(3) at 1018. Therefore, Defendants did not know nor did they intend to

bomb civilians and these charges are unsupportable by the evidence.

#### IV. AERIAL ATTACKS BY DEFENDANT PARATROOPERS DO NOT SATISFY THE ELEMENTS OF WAR CRIMES.

32. Defendants' actions in furthering the peacekeeping efforts of the UN do not constitute war crimes. Even viewed in the worst light, Defendants' actions did not occur during an international armed conflict. Consequently, their actions cannot fit the elements of war crimes. See Elements art. 8(2)(a). Therefore, ICC Jurisdiction should not follow.

##### A. The Bombings did not Occur During an International Armed Conflict.

33. The conflict in question was between a UN peacekeeping group and an insurgent group from the northern region of Vineland. The International Tribunal for the Former Yugoslavia ruled that an armed conflict exists "whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State." Prosecutor v. Tadic, Case No. IT-94-1-T, ¶ 70 (May 7, 1997). That Ridgeland and Katonia troops were involved does not equate with Ridgeland and Katonia being involved as states. Katonia and Ridgeland each lent large numbers of troops to a UN peacekeeping effort and, as such, their forces were under the control and direction of the UN during the times in question. Here the "conflict" was between those who want peace in Vineland and those who have an interest in having conflict in the region. Katonia and Ridgeland forces were present to effectuate UN mandates to "verify cessation of hostilities, to set up a security zone for civilians and refugees, and to make preparations for the forthcoming elections in the various regions." R. ¶ 1. In doing so, Katonia's and Ridgeland's forces were acting under the auspice of UN as peacekeeping forces and not, as such, under direction of the sovereign's military commanders. Therefore, this was not an "international conflict" in the common or the international meaning of the term. When the fighting began between Katonia and Ridgeland and the unidentified armed groups, the conflict did not become

an international conflict but remained a conflict between UN forces and a common insurgent group. Hence, given that the conflict was not between states or governmental authorities, there is no international conflict in existence here.

**B. The Charges against Defendants Involving the Impairment of Liberty of any Kind do not Withstand any Scrutiny.**

34. Detaining 70 people while searching for insurgents does not fit the elements of deportation and forcible transfer of population 7(1)(d), imprisonment or other severe deprivation of physical liberty, 7(1)(e), unlawful deportation and transfer 8(2)(a)(vii)-1, and unlawful confinement 8(2)(a)(vii)-2. There is neither a forcible transfer nor an unlawful transfer since the conduct was not "committed as part of a widespread or systematic attack directed against a civilian population," nor did the perpetrators know "that the conduct was part of or intended . . . to be a part of a widespread or systematic attack directed against a civilian population." See Elements art. 7(1)(d)(5), 7(1)(e)(5). Also, the crimes of unlawful deportation and transfer as well as the crime of unlawful confinement cannot stand since, as outlined above, Defendants' alleged conduct did not take "place in the context of [nor] associated with an international armed conflict." See Elements art. 8(2)(a)(vii)-1, 8(2)(a)(vii)-2. The detainees in this case were temporarily detained as part of a UN peacekeeping effort. Specific to the instances alleged here, the detainees were searched in order to determine if insurgents were among the 70 detainees. As such, Defendants' actions, as alleged, do not fit the elements of Article 7(1)(e) which states that the perpetrator imprisons persons or otherwise severely deprives persons of their liberty. These detentions were temporary and, as such, cannot fit the war crime definition of unlawful confinement.

35. Assuming, arguendo, that the Defendants detained the complainants herein, such detention was in furtherance of a UN mission to weed out insurgents in a very unstable area of the world. The search and detention was in response to a surreptitious attack by armed forces believed to be supported by "foreign oil companies interested in keeping the UN peacekeepers out of the region." R. ¶ 5.

36. Given that the Defendants were acting under a UN sanctioned peacekeeping effort, any investigation which arose out of it, was in furtherance of such. There can be no charge of imprisonment or unlawful detention against law enforcement officers acting under UN authority. Policy dictates that UN peacekeepers should have every opportunity to impose security in the area. Conversely, any insurgent groups should not be able to seek recourse against those whose mission it is to “verify cessation of hostilities, to set up a security zone for civilians and refugees, and to make preparations for the forthcoming elections in the various regions.” R. ¶ 1. Therefore, the charges alleging impairment of liberty cannot stand.

C. Defendants did not Torture any of the Alleged Detainees.

37. There is no evidence here that those who were tortured were civilians. Also, as outlined above, the perpetrator did not know “that the conduct was part of or intended . . . to be a part of a widespread or systematic attack directed against a civilian population.” See Elements art. 7(1)(f)(5). Indeed, the alleged torture occurred during a UNVINE offensive to counter ANVA’s efforts, acting in concert with foreign oil companies, to keep “the UN peacekeepers out of the region.” R. ¶ 5. The alleged torture came during a raid, the purpose of which was to find insurgents in the region. Furthermore, we are only told that the victims herein were “tortured.” R. ¶ 6, and not whether they were “in the custody or under the control of the perpetrator.” Elements art. 7(1)(f)(2). Nor can it be assumed that the “pain and suffering did not arise only from, and was not inherent in or incidental, to lawful sanctions.” *Id.* art. 7(1)(f)(3). Hence, these charges cannot stand.

D. Defendants did not Pillage, Destroy or Target Civilian Property.

38. Defendant paratroopers were acting under direct UN order and any of their actions should be viewed in furtherance of UN directives. The prosecutor may allege that “personal property had been stolen by the paratroopers while conducting the house-to-house searches.” R. ¶ 6. However, the evidence does not indicate that the property confiscated, at the time, could not

have led to the capture of ANVA troops. Nor does the evidence establish whether the troopers had a reason to believe that the property taken in the raids could not have been used as weapons to harm UNVINE forces. R. ¶ 5. Given this context, the paratroopers must take all efforts to protect themselves and other civilians from attacks at the hands of any other unidentified forces, ANVA, or otherwise. Therefore, any expropriation that occurred was not contemplated by the Rome Statute which does not limit "existing or developing rules of international law." Rome Statute art. 10 at 1010. It is important to reiterate that, as stated above, the alleged pillaging did not take "place in the context of and was [not] associated with an international armed conflict." Elements art. 8(2)(b)(xvi)(4). Therefore, jurisdiction for prosecution of this crime cannot stand.

39. With regard to the destruction of property allegations, the Prosecution cannot prove that this was the result of a "widespread and systematic effort." Elements art. 7(1)(f)(5). Furthermore, the prosecution lacks evidence that shows that the Defendants are the perpetrators of the crime. We are only told that the "personal property had been stolen." R. ¶ 6.

## CONCLUSION

International Treaties and Agreements, as well as a UN Security Council Resolution itself, bar the ICC from exercising jurisdiction in this matter. The evidence, even viewed in its most damning light for the Defendants, does not establish any reliable foundation for prosecution. Accordingly, this Court should dismiss the charges against the Defendants.