

**Situation in the Polotska Region**  
***Prosecutor v. Lucretia Barcino***  
**Instructions**

1. Proceedings: The hearing takes place in the jurisdiction of the International Criminal Court ('ICC') at the "confirmation of charges" stage pursuant to Article 61 of the 1998 Rome Statute of the ICC ('Rome Statute'). At this stage, the Prosecutor must "support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged." The Accused may "object to the charges" and "challenge the evidence presented by the Prosecutor".
2. Facts and evidence: The case is entirely fictional. The Statement of Agreed Facts includes all the facts supported by evidence that have been transmitted to the Defence, as well as facts and evidence presented by the Defence. Teams should confine themselves to the facts supplied. Neither the Prosecutor nor the Defence may introduce new evidence or facts at the hearing (Article 61(6)(c) of the Rome Statute is not applicable). Teams may nonetheless draw reasonable inferences from the facts. They may also question the credibility or weight of the evidence.
3. Procedure: The problem is not intended to raise questions of procedure other than the rights of the accused pursuant to Articles 66 and 67 of the Rome Statute. Any other procedural questions should be ignored.
4. Jurisdiction and admissibility: Counsel may, if relevant, address issues of conflict classification or gravity. Any other issues of jurisdiction and admissibility should be ignored.
5. Applicable law: In accordance with Article 21 of the Rome Statute:
  1. *The Court shall apply:*
    - (a) *In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;*
    - (b) *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;*
    - (c) *Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.*
  2. *The Court may apply principles and rules of law as interpreted in its previous decisions.*
6. Teams are encouraged to look at the case law of international and national courts. If teams rely on decisions of national courts, these should be leading decisions and teams should expect to be asked for copies of the head note and the portion of the transcript or judgment referred to in their argument.
7. Participation to treaties: at all material times, the treaties listed in Annex I were in force for the State of Bashkizan, the Kingdom of Parm and the Republic of Tvir.

**Indicative Authorities and Research Material**

**International Criminal Court**

- a) Rome Statute of the International Criminal Court (1998):  
[http://legal.un.org/icc/statute/english/rome\\_statute\(e\).pdf](http://legal.un.org/icc/statute/english/rome_statute(e).pdf)

b) Elements of Crimes under the Rome Statute: <https://www.icc-cpi.int/Publications/Elements-of-Crimes.pdf>

### **Basic IHL Documents**

- a) IHL Treaties: <https://ihl-databases.icrc.org/ihl>
- b) Customary IHL: <https://ihl-databases.icrc.org/customary-ihl/>
- c) ICRC Commentaries to the Geneva Conventions and its Additional Protocols: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>

### **Cases**

- a) International Criminal Tribunal for the Former Yugoslavia: <http://www.icty.org/en/cases/judgement-list>
- b) International Criminal Tribunal for Rwanda cases: <http://unictr.unmict.org/en/cases>
- c) International Criminal Court: <https://www.icc-cpi.int/cases>
- d) International Court of Justice: <https://www.icj-cij.org/en/decisions>

## Statement of Agreed Facts

### **The region of Polotska**

1. The Republic of Tvir and the State of Bashkizan are neighbouring countries and former colonies of the Kingdom of Parm. Historically, the inhabitants of Bashkizan were farmers and nomadic livestock herders, living in the plains of Bashkizan. Tvir is a mountainous country, where inhabitants engaged in mining of coal and minerals. The region of Polotska is an enclave in Bashkizan characterized by mountain ranges and surrounded by plains. The inhabitants, the Polotsk, have been isolated from the rest of Bashkizan and always have fiercely defended their autonomy. In the 19<sup>th</sup> century, during the colonial rule of Parm, rich silver and gold deposits were discovered in Polotska. Subsequently, the Kingdom of Parm encouraged the inhabitants of Tvir to move to Polotska, to work as miners in the newly opened mines. Over time, the immigrants of Tvir mixed with the Polotsk population to form a mixed Tvir-Polotsk ethnic group.

2. In 1963, the Kingdom of Parm, during the process of decolonization, organized a plebiscite on the question of independence of Bashkizan and Tvir. Due to mass protests in Polotska, whose inhabitants did not want to join Bashkizan, the Kingdom of Parm organized a separate plebiscite in Polotska, allowing its inhabitants to choose independence, unification with Bashkizan, or unification with Tvir. An overall majority of the population in Polotska, 71 percent, voted for unification with Tvir. In May 1964, the Kingdom of Parm relinquished its colonial rule and Bashkizan and Tvir became independent, with the enclave of Polotska under Tvir sovereignty. Bashkizan has however consistently rejected the sovereignty of Tvir over Polotska and has claimed the region as its own.

3. In February 1967, the armed forces of Bashkizan surrounded the region and closed off all the major roads into Polotska to force Tvir to the negotiating table to discuss the handover of Polotska. Instead, in April 1967, Tvir launched an all-out assault against Bashkizan. During a four-month period Tvir managed to occupy the territory between the Bashkizan-Tvir border and Polotska. At the end of the conflict, Tvir refused to return the occupied Bashkizan territory, citing the need for a security corridor between its territory and Polotska.

4. In 1973, during a political crisis in Tvir, Bashkizan seized the opportunity to recapture the occupied territory and the Polotska region. Between 1973 and 1998, the Polotsk region was under military occupation. Bashkizan armed forces were regularly attacked by members of the Polotsk Liberation Front (PLF), whose distinctive sign is a white bear on a red background, the reverse of the Tvir flag. The PLF equally launched missile attacks against villages at the border with the region. The PLF enjoys wide support among the Polotsk population and is prohibited under Bashkizan law as a terrorist organization. Nonetheless, a sizeable minority abhors the methods of the PLF and wants a peaceful reunification with Tvir and autonomy for the region in the meantime. In 1997, the Polotsk Reunification and Autonomy Party (PRAP) was formed to politically advocate for the wishes of the minority.

5. On 1 January 1999, the PRAP and the government of Bashkizan reached an agreement. Polotska was granted significant legislative and administrative autonomy and would be governed by the PRAP. The Bashkizan armed forces retreated from Polotska, where the security was guaranteed by a local police force. Nonetheless, the Bashkizan armed forces built security fences around the region and set up checkpoints at all major roads into the region. The PLF rejected the agreement and vowed to carry on the fight. From 1999 until 2019, the PLF occasionally launched attacks against the local

government in Polotska and villages surrounding the region. In response, the Bashkizan armed forces would close the region off, sometimes for weeks, and, with assistance of the local police force, send in troops to search for and round up suspected members of the PLF.

### **Lucretia Barcino and BarcTec**

6. Ms. Lucretia Barcino is the founder and CEO of BarcTec, a global multinational specialized in information and communication technology, artificial intelligence, and social media. Although it was incorporated in the Kingdom of Parm, its headquarters is located in Tvir, in the capital Tvirapolis. Ms. Lucretia Barcino is a national of the Kingdom of Parm, but is also a permanent resident of Tvir. She has been described as an IT whiz kid and an AI visionary. She believes that AI will significantly improve the lives of people and make the world a better place. Ms. Lucretia Barcino is actively involved in the different projects under development in BarcTec. Staff have to regularly send detailed reports to her. In addition, she typically contributes with ideas and suggestions for improvements to the ongoing projects.

7. BarcTec has significant business interest in both Bashkizan and Tvir, whose governments want to implement e-governance and smart cities. In particular, in Bashkizan, BarcTec runs a project whereby through public CCTV cameras, numerous apps and social media on smartphones, real time data is collected that is used for transit, traffic, health services, security, and community news. The data is collected with the consent of the users and stored on servers in Bashkand, the capital of Bashkizan. The capital of Polotska, Polotgrad, is one of the first cities in Bashkizan where the smart city project is rolled out in a test phase.

### **The deployment of PanOpt in Polotska**

8. On 17 November 2019, at 11:30 pm, local police officers in Polotska chased the 17-year-old Andrey Dubyov through the streets of Polotgrad after they caught him graffitiing pro-PLF slogans on public property. During the chase, Mr. Andrey Dubyov jumped from a bridge to his death. The accidental death of Mr. Andrey Dubyov caused widespread upheaval. For weeks, the population in Polotska protested against the authorities. When the authorities tried to quell the protest, the protest became increasingly violent. Sit-ins were organized, roads blocked and stones and other projectiles hurled at the police. On 17 December 2019, a mass rally to commemorate the death of Andrey Dubyov resulted in riots and the occupation of local government buildings. The local police asked the Bashkizan armed forces for assistance.

9. On social media, messages of support for the PLF were trending. Furthermore, Bashkizan intelligence noted that encrypted messages on social media were used to organize and coordinate protests and acts of resistance against Bashkizan armed forces in Polotgrad. In particular, BarcTalk, a social medium platform owned by BarcTec is a popular tool and flooded with messages to support the PLF. Many users justified the actions of the protesters and the attacks of the PLF and voiced their support for reunification with Tvir.

10. On 8 January 2020, the Bashkizan Herald, on the basis of an anonymous source in the government, ran an article in which the plan of the government to detain large swathes of inhabitants of Polotska was set out. A spokesperson of the government of Bashkizan refused to comment upon the newspaper article. One week later, the government of Bashkizan held a video conference with Ms. Lucretia Barcino, in which the government asked for access to the data of users of the social media

platform, BarcTalk. In addition, the government asked for access to all data collected as part of the smart city project in Polotgrad in order to identify the protesters and sympathizers of the PLF. Ms. Lucretia Barcino, supported by her legal team, initially refused to hand over the data, citing privacy concerns. Nonetheless, after warnings that the government would seek a court order to release the data on the basis of existing national security legislation, Ms. Lucretia Barcino agreed to hand over the data.

11. During February 2020, throughout Polotska, using the data handed over by BarcTec, Bashkizan armed forces and police made massive arrests of Polotskan inhabitants who supported the PLF or were involved in the protests. The large scale of the arrests attracted a significant amount of media coverage and a diplomatic protest of Tvir.

12. On 7 March 2020, the government of Bashkizan held a meeting to discuss how to deal with the mass arrests. It soon became apparent that there were not enough facilities to hold all arrestees for a longer duration. Whereas the arrestees who were involved in riots could be detained in pre-trial detention facilities, the government had no capacity to house all arrestees who were arrested for merely expressing support for the PLF, which made up the largest part of those arrested.

13. During the meeting, the Bashkizan Minister of Justice mentioned that BarcTec had developed an AI programme, PanOpt, to be used to monitor prisoners who are deemed fit to re-enter society. Such prisoners would be assigned residences with special magnetic locks that can be unlocked by an app installed on a smartphone. Every time the prisoner would like to leave the residence, information about the request to leave has to be provided in the smartphone app. If the software approves of the request to leave, it will unlock the door. During the period of leave, the location of the prisoner would be broadcasted by the smartphone's app so that public CCTV cameras could instantly locate the prisoner in the event that he or she deviated from the purpose of the leave.

14. On 10 March 2020, the government of Bashkizan contacted BarcTec to inquire about the operationalization of PanOpt in Bashkizan. During a video conference with Ms. Lucretia Barcino, the government of Bashkizan made extensive inquiries about the use of PanOpt and whether it could also be used to monitor larger groups which may pose a security threat. During the meeting no mention was made of the use of PanOpt in Polotska. Ms. Lucretia Barcino confirmed that with some adjustments PanOpt could be used in such a manner. In addition, Ms. Lucretia Barcino assured that an adjusted version of PanOpt, optimized for this purpose, could be delivered in April 2020.

15. During April and May 2020, the government of Bashkizan operationalized the PanOpt programme in Polotska for inhabitants that were involved with spreading messages of support for the PLF, justifying PLF actions and campaigning for reunification with Tvir. These inhabitants were confined to their homes, which were outfitted with special magnetic locks that could be opened by using the smartphone app. They could leave their house at designated times for groceries, medical visits or leisure activities, with their location being constantly monitored by the smartphone app and on security cameras throughout Polotska. When inhabitants violated the restrictions, they could be imprisoned. Every three months the government would review whether the restrictions against a particular inhabitant should be maintained.

### **Use of EagleEye AI Targeting Software**

16. During June 2020, Tvir built up armed forces along the border with Bashkizan. Bashkizan

responded by assembling forces along the border as well. On 1 July 2020, at 11:55 pm, the President of Tvir announced that the government had decided to go to war with Bashkizan to reunify Polotska with Tvir. One hour later, Tvir armed forces crossed the border and engaged with Bashkizan armed forces. The Tvir airforce destroyed large parts of Bashkizan's helicopter fleet and dropped weapons, in particular RPGs, into Polotska, which were collected by PLF. During the night, the PLF launched attacks against Bashkizan armed forces stationed in Polotska.

17. Between 2 July and 14 July 2020, intense fighting along the border forced Bashkizan to redeploy armed forces from Polotska to the border region. As a result, the PLF was able to take control of large parts of Polotska, including its capital, Polotgrad. After 15 July 2020 Bashkizan stabilized the front near the border and sent units of the 23<sup>rd</sup> armoured regiment and 501<sup>st</sup> mechanized infantry regiment to Polotska, to retake control. The mountainous terrain allowed the PLF to lay ambushes and damage or destroy many armoured vehicles of Bashkizan with RPGs and home-made bombs. In addition, in residential areas, PLF fighters blended in with civilians before and after attacks. Consequently, Bashkizan armed forces reported numerous civilian casualties throughout Polotska as a result of return fire by Bashkizan armed forces. In order to avoid further civilian casualties, the Bashkizan armed forces suspended all operations in Polotska on 30 July 2020. News media in Tvir extensively report on the civilian casualties as another reason to support the war for reunification.

18. On 3 August 2020, the government of Bashkizan secretly contacted Ms. Lucretia Barcino with a request as to whether BarcTec could develop an AI programme that could help distinguish civilians from PLF fighters. The next day, Ms. Lucretia Barcino responded that BarcTec had an AI programme, EagleEye, that was normally used to secure airports and public transportation areas against terrorist attacks. Through the use of cameras, the programme can identify persons in crowds whose behaviour is suspicious. It can also analyze whether such persons are likely to carry weapons. Ms. Lucretia Barcino informed the government of Bashkizan that BarcTec software engineers would be able to adapt the software and link it to the targeting systems on board of the armoured vehicles of the 23<sup>rd</sup> armoured regiment and 501<sup>st</sup> mechanized infantry regiment. Between 25 August and 2 September, the militarized version EagleEye software is tested in computer simulations with generally satisfactory results. Internal BarcTec memos demonstrate that EagleEye has no problem identifying individual threats or threats in small groups of individuals. With regard to larger groups however, EagleEye takes more time to identify potential threats and may become overloaded. The findings of the simulations were handed over to the Bashkizan armed forces.

19. On 5 September 2020, the first units of the 23<sup>rd</sup> armoured regiment and 501<sup>st</sup> mechanized infantry regiment are equipped with the militarized version of the EagleEye programme. Through optical sensors, the targeting system of the APC and tanks of the units would automatically identify potential threats, select the targets and would automatically open fire in 10 seconds, unless the gunner, in that time span, opened or aborted fire. The EagleEye software collects data on threat identification and target selection and sends this data to servers in BarcTec, which shares the data with the Bashkizan armed forces. During the first week of the use of the programme, when operating in mountainous terrain outside Polotgrad, units reported fewer civilian casualties and lesser damage and destruction of armoured vehicles. Data equally demonstrated that the gunners opened fire 3.5 seconds after the target was acquired. Rarely did the gunners abort fire.

20. On 18 September 2020, units of the 23<sup>rd</sup> armoured regiment and 501<sup>st</sup> mechanized infantry regiment reach the outskirts of Polotgrad. PLF pamphlets spread among the civilians called upon civilians to block the streets to stall the advance of the Bashkizan armed forces. Throughout the city

barricades were erected with civilians behind them, holding banners with pro-PLF slogans and calls for reunification with Tvir. Members of the Bashkizan armed forces convinced the civilians to leave the barricades peacefully.

21. When Lt. Vassily Petrov's unit of 10 armoured vehicles reached Old Town Plaza, however, they were met with a large crowd of approximately 250 civilians, blocking the plaza. Lt. Vassily Petrov left his vehicles and tried to negotiate a peaceful evacuation of the square. During the negotiation, the optical sensors of one of the vehicles identified a potential threat, perhaps a PLF soldier with a RPG, in a building behind the civilians. The gunner of the vehicle immediately opened fire at the building. Some panicked civilians, believing they were the object of the attack, threw stones at the armoured vehicles. Data showed that the EagleEye software identified these civilians as potential threats. Data also demonstrated that 8 seconds after the threat identification, the gunners opened fire, killing 37 civilians, and wounding 42. Lt. Vassily Petrov was hit by a stone on his head and needed medical attention.

### **Development and use of Zilant, a self-learning AI Software Programme**

22. Because of the destruction of large parts of its helicopter fleet by the Tvir airforce during July 2020, the Bashkizan armed forces were seeking alternatives to support their ground forces operating in Polotska. During secret talks between Bashkizan and BarcTec, Ms. Lucretia Barcino informed Bashkizan that BarcTec had developed an experimental AI programme, Zilant. Zilant is a self-learning AI programme that independently collects data through drones, analyzes the data, and uses the outcome of the analysis to select targets. Ms. Lucretia Barcino assured Bashkizan representatives during the meeting that Zilant, after some further changes to its software, could become fully operational by September 2020.

23. During the month of August, Zilant's software was programmed on the basis of known operation methods of the PLF. The software was programmed to recognize the distinctive sign of the PLF, a white bear on a red background. Since the PLF fighters operated in small groups, the software was programmed to focus on small groups of people. Zilant was also provided with the last known locations of the PLF command centres in the mountains north of Polotgrad.

24. Zilant became operational on 8 September 2020, during the military operation to retake control over Polotska. During several weeks, Zilant collected information on gatherings of small groups of PLF fighters. Data showed that those groups frequently met near small abandoned churches and chapels which dotted the mountainous region north of Polotska and were often the only geographical marker in the area. The churches and chapels all have a similar construction style, namely a domed basilica. Zilant also discovered important PLF command centres and munition stockpiles in abandoned and dilapidated sanatoria north of Polotgrad. Those sanatoria were built in the 1920s to help miners with silicosis and also have a unique architectural style, namely the use of distinct art deco shaped windows and art deco ornaments.

25. From 4 October 2020, Zilant drones successfully carried out numerous strikes against PLF fighters. One of the victims was Major Alexis Groshak who was killed by a Zilant drone strike on 9 October 2020. Three days later, Major Alexis Groshak is buried in his home village, Vornu, in the mountains north of Polotgrad. During the ceremony, flags of the PLF are displayed in front of the St. Eligius church and when the coffin entered the church, PLF fighters fired a military salute in the air. A Zilant drone flying over the village carried out a strike, identifying the church as a military

objective. The St. Eligius church was completely destroyed, killing the priest and his four acolytes, an unknown number of local civilians and family members of major Alexis Groshak, and an unknown number of PLF fighters.

26. During October 2020, many wounded PLF were transported to the Mountainview Sanatorium, the last remaining operational sanatorium in Polotska, north of Polotgrad. Although the sanatorium cared for the few remaining miners with silicosis, it also offered medical services to local communities in the area. Because Mountainview Sanatorium is located in deep PLF controlled territory it was one of the few options for medical care of PLF fighters. Wounded PLF fighters were brought to the sanatorium in vehicles with the distinctive emblem of the PLF, who left the sanatorium after handing over the wounded. During 10 days, Zilant drones collected data on the activities around the sanatorium. On 17 October 2020, the Zilant drone struck the main building of the sanatorium, killing an unknown number of patients and medical staff.

27. Internal BarcTec documents, obtained during the Tvir criminal investigation against Lucretia Barcino, showed that software engineers who worked on Zilant reported to Ms. Lucretia Barcino that the Zilant AI struggled to make decisions in situations when the identified target was not clearly a military objective or a civilian object. Ms. Lucretia Barcino ordered the software engineers to patch the software as much as possible to avoid that Zilant would accidentally target a civilian object. Nonetheless, in an internal memo to Ms. Lucretia Barcino, the software engineers expressed doubts that the patch would be sufficient to prevent Zilant in all circumstances to make the correct decision. In her reply by email, Ms. Lucretia Barcino asked the software engineers to keep a close eye on the operation of Zilant and to continuously patch the targeting software, if needed.

#### **Arrest and transfer of Ms. Lucretia Barcino to the ICC**

28. Outraged by the Zilant drone strikes in Polotska, Tvir referred the situation in Polotska to the ICC on 12 November 2020. At the same time, Tvir launched investigations into whether BarcTec was secretly providing weapons and technology to its enemy, Bashkizan. On 9 December 2020, Tvir issued an arrest warrant against Ms. Lucretia Barcino for illegal weapons transfer to Bashkizan. Ms. Lucretia Barcino had however already fled to the Kingdom of Parm. On 6 January 2021, Tvir requested the Kingdom of Parm to extradite Ms. Lucretia Barcino to Tvir. This request was refused. Two days later, Tvir submitted evidence to the Office of the Prosecutor. Tvir indicated that under its national law in the absence of Ms. Lucretia Barcino it could not open a criminal procedure against her. The Kingdom of Parm declined to open any criminal investigation into Ms. Lucretia Barcino.

29. On 17 April 2021, the ICC issued an arrest warrant against Ms. Lucretia Barcino. The next day, Parm police officers arrested her at her residence in Parm. Ms. Lucretia Barcino was transferred to the ICC detention facility in The Hague on 23 April 2021. Ms. Lucretia Barcino has protested her arrest, has maintained her innocence and lambasted the charges against her as unjustified since she was only involved in developing state of the art technology.



## Charges

The Office of the Prosecution presents the following charges against the defendant, Ms. Lucretia Barcino:

### **Count 1**

With respect to the deployment of PanOpt in Polotska:

On the basis of individual criminal responsibility, for contributing to the commission of a crime by a group of persons acting with common purpose, pursuant to Article 25(3)(d) Rome Statute

- The war crime of unlawful confinement in Article 8(2)(a)(vii) Rome Statute.

### **Count 2**

With respect to the use of the EagleEye AI targeting software in vehicles of the units of the 23<sup>rd</sup> armoured regiment and 501<sup>st</sup> mechanized infantry regiment, resulting in the killing and wounding of civilians gathered on Old Town Plaza in Polotgrad on 18 September 2020:

On the basis of individual criminal responsibility for aiding and abetting or otherwise assisting the commission of the crime, pursuant to Article 25(3)(c) Rome Statute,

- The war crime of intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities in Article 8(2)(b)(i) Rome Statute

### **Count 3**

With respect to the development of the Zilant self-learning AI programme, which caused the drone strikes against the St. Eligius Church in Vornu on 9 October 2020 and the drone strike against Mountainview Sanitorium on 17 October 2020:

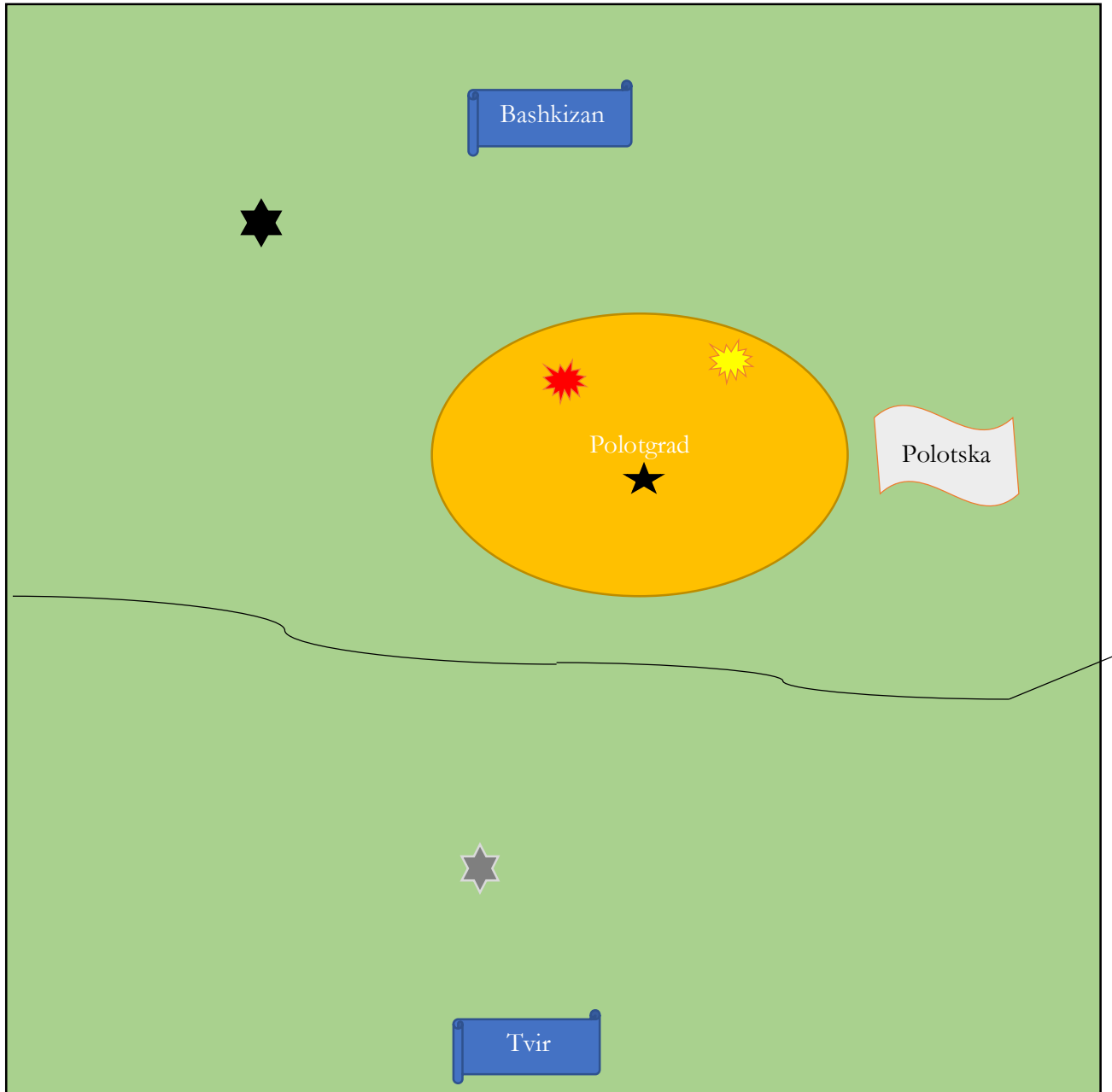
On the basis of individual criminal responsibility for commission as perpetrator, pursuant to Article 25(3)(a) Rome Statute

- The war crime of intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives, in Article 8(2)(b)(ix) Rome Statute.

**Annex I: Applicable Agreements**

<b>Conventions</b>	<b>State of Bashkizan</b>	<b>Republic of Tvir</b>	<b>Kingdom of Parm</b>
Charter of the United Nations	✓	✓	✓
Geneva Convention I	✓	✓	✓
Geneva Convention II	✓	✓	✓
Geneva Convention III	✓	✓	✓
Geneva Convention IV	✓	✓	✓
Additional Protocol I	✓	✓	
Additional Protocol II	✓	✓	
Vienna Convention on the Law of Treaties	✓	✓	✓
Rome Statute of the International Criminal Court		✓	✓

Annex II: Sketch Map



★ : Bashkand

★ : Tviropolis

★ : Vornu

★ : Mountainview Sanitorium