



The 21st Red Cross International Humanitarian Law Moot (2023)
An Inter-University Competition for Asia-Pacific Region

SITUATION IN THE REPUBLIC OF THAUGU

Prosecutor v. Amun THOT

STATEMENT OF AGREED FACTS

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 headnote 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 States of Ikaran and Thaugu.

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 their 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: <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

1. Ikaran and Thaugu are neighbouring States situated in the Avalia region that comprises 15 States. All States in the Avalia region are member of a regional security organization, the Organization for Security and Cooperation in the Avalia Region (OSCAR), created in 1955. OSCAR adheres to the principles of the UN Charter. Article 5 OSCAR Statute states that:

“(1) The Organization respects the political, social and economic self-determination of the peoples of its Members, as expressed through their constitutions and constitutional traditions.
(2) No Member may recognize any government which came into power through unconstitutional means, such as the rejection of election results, unlawful suspension of elections, and military coups.”
2. Ikaran has a long history in the Avalia region. During the 17th century it was the dominant power in the region, with other States, including Thaugu, being its tributary. Since the 18th century Ikaran had to fend off colonial encroachments from various European States. All of its tributaries were colonized with the exception of Thaugu. Ikaran equally lost significant parts of its territory to colonial states, which merged these territories with their existing colonies. In 1888, after a short war with a colonial power, Ikaran lost its independence and became a colony.
3. Like Ikaran, Thaugu has a long history and unique culture, but was dominated by its much larger neighbour Ikaran. In 1693, Ikaran invaded Thaugan and subjugated it. Thaugu agreed to become Ikaran’s tributary and to cede the Xindu Province to Ikaran. In 1888, just before Ikaran was absorbed to become a colony, Thaugu sided with the colonial power that was fighting Ikaran and seized the Xindu province. Because of its mountainous terrain and dense jungles, Thaugu was never colonized. In 1890, as reward for supporting the colonial power, Thaugu’s sovereignty over the Xindu province was recognized and a border treaty concluded.

Situation in Ikaran

4. In 1961, Ikaran gained its independence as the last State in the Avalia region after a decades long struggle. Its borders were determined on the basis of the principle of *uti possidetis*. The Ikaran National Party (INP) was formed from the Ikaran Liberation Organization, the major liberation movement which ensured Ikaran’s newly found independence. The INP and other parties drafted Ikaran’s constitution, creating a republic with a Presidential system, whereby the President is directly elected by the voters. The Ikaran President has wide powers in foreign affairs and defence. The first election was held in 1963 and was convincingly won by the INP, which secured an absolute majority in the parliament. The first President was Mr. Mihn Tang, the father of the current President Mihn Sang.
5. During the 1960s and 1970s the INP started wide-scale political and economic reform programs that turned Ikaran into the wealthiest State in the Avalia region, with the best equipped armed forces in the region. As a result, the INP always won a majority in the parliament and President Mihn Tang was constantly re-elected. During his presidency, Ikaran joined OSCAR in 1965 and established good relations with all other States in the region. In particular, Ikaran provided large amounts of development aid to Thaugu.

6. In 1993, President Mihn Tang died and in the following presidential election, his son Mihn Sang was elected. The new President was initially well received, but economic crises in the 2000s eroded support for the President and the INP, which after each election continued to lose seats in the parliament. From 2005 onwards, President Mihn Sang increasingly used nationalistic rhetoric, including promising reclamation of territories Ikaran lost since the 18th century, in particular the province of Xindu, to shore up support. President Mihn Sang started to rely on a small circle of close friends and confidants, such as General Amun Thot, who gained significant influence over the President. In 2009, Ikaran launched a case before the International Court of Justice on the sovereignty over Xindu province, but in 2011 the ICJ rejected its jurisdiction to hear the case. Subsequently, Ikaran sent armed forces to the border with Thaugu. However, after the intervention of OSCAR, Ikaran agreed to withdraw its armed forces.
7. On 22 December 2017, the INP lost its majority in the Ikaran Parliament, with no political party obtaining a majority. In addition, with a small margin, President Mihn Sang lost his re-election bid. However, President Mihn Sang alleged electoral fraud and outside interference in the election and declared a state of emergency. OSCAR, which observed the election, stated that it had no evidence of electoral fraud and outside interference and declared that President Mihn Sang had lost the election. On 1 January 2018, the Ikaran Constitutional Court, after a thorough review of the election, declared that no fraud had been found and confirmed the result of the parliamentary and presidential election. The next day, Ikaran armed forces, under command of General Amun Thot, set up check points and roadblocks throughout Ikaran. In addition, President Mihn Sang imposed a curfew and by decree abolished the Constitutional Court.
8. On 10 January 2018, the OSCAR Council met in an emergency session to discuss the situation in Ikaran. Thaugu proposed a resolution to find Ikaran in breach of Article 5 of the OSCAR Statute and to suspend the membership rights of Ikaran, including the right to vote on resolutions. All OSCAR Members, with the exception of Ikaran, voted in favour of Thaugu's proposal for resolution. The adopted resolution came into effect immediately and Ikaran's membership rights continue to be suspended until this day.

Situation in Thaugu

9. Thaugu remains the poorest State in the Avalia region. 75 percent of its population live as subsistence farmers working small plots of agricultural land owned by a small elite of landowners, who dominate the administration and the armed forces. In 1955, the Kingdom of Thaugu became one of the original members of OSCAR. In 1977, King Ahmos IV turned Thaugu into a constitutional monarchy, although behind the scenes the King kept significant power and relied heavily on the landowners for political support. This was because the Thaugu landowners were known to press their tenants to vote for the political candidates whom the landowners favoured.
10. In 2017, the government of Thaugu promoted the cultivation of cash crops as a means to help boost Thaugu's economy. Consequently, many subsistence farmers were chased from their plots; large swathes of jungle were removed to provide space for plantations. Landless farmers

and their families moved to cities in the hopes of finding work. Unfortunately, many ended up destitute, unable to find work. Throughout Thaugu tensions rose and many cities witnessed riots by unemployed farmers, which the government attempted to quell with police and military forces. However, on occasions the lower ranks of police and the military, who were comprised of family members of sustenance farmers, refused orders to disperse the crowds.

11. On 16 March 2018, farmers in Xindu province rose up, plundered plantations and houses of landowners and blocked roads. The farmers organized themselves as the Xindu Farmers Union (XFU) and demanded far-reaching land reforms. Armed forces that were sent to arrest the farmers, instead joined them, threatening to march on the capital, Thanut. On 19 March 2018, King Ahmos IV suddenly died and was succeeded by his daughter, Queen Anat I. On 23 March 2018, the Queen, in her coronation speech, promised electoral reforms, which would be followed by new elections. She also appointed a commission to examine land reforms and requested the government to provide food aid for the destitute farmers and their families.
12. After the elections on 25 July 2018, the XFU and its coalition partners obtained a 60 percent majority in the Thaugu Parliament. Queen Anat I appointed the leader of the XFU, Mr. Sadiki Khons, as Prime Minister. In a joint speech, Queen Anat I and the Prime Minister announced far-reaching land reforms, a new tax system, criminal reform and improved human rights protection. On 31 August 2018, Thaugu acceded to the Rome Statute.
13. On 3 November 2018, a car bomb in Thanut aimed at the motorcade of Queen Anat I and Prime Minister Sadiki Khons killed the Queen and injured the Prime Minister. Initial criminal investigations indicated that the target of the attack was the Prime Minister and linked the attack to disgruntled landowners and high-ranking military officers. Since Queen Anat I did not have any successor, the XFU and its coalition partners declared that Thaugu would become a presidential republic and requested the parliament to design a new constitution.
14. On 1 January 2019, a new constitution for Thaugu was proposed, whereby large tracts of land would become nationalized and redistributed amongst farmers. A referendum was scheduled for 1 February 2019. On 3 February 2019, after initial results pointed to an acceptance of the new constitution, Thaugu military forces took control of Thanut and other major cities. The Prime Minister Sadiki Khons, supported by loyal troops, managed to escape the capital by helicopter. At 10 pm that day, General-Lieutenant Asim Gyasis declared that the military had taken over Thaugu, declared a state of emergency and suspended the new constitution.
15. On 4 February 2019, the OSCAR Council met in emergency session. The Thaugu representative, who stayed loyal to the government of Prime Minister Sadiki Khons, asked the Council to adopt a resolution requiring Members not to recognize the military government of Thaugu and to prohibit any aid or assistance to this government. All Members of OSCAR voted in favour of the resolution. Because of the suspension of its voting rights, Ikaran did not vote on the resolution.
16. During February-March 2019, Mr. Sadiki Khons set up a national government, the Thaugu National Democratic Government (TNDG) and called upon all civil servants and armed forces to disobey the military government of Asim Gyasis and to join the national government. Large parts of the military, in particular the lower ranks, non-commissioned officers and lower-

ranked officers, abandoned their posts and joined the national government, which remained in control of large parts of the country, in particular in rural areas.

Intervention of Ikaran

17. Because significant parts of its armed forces had deserted to the TNDG, the military government of General-Lieutenant Asim Gyasis faced severe difficulties in holding its positions throughout Thaugu. In April-May 2019, the TNDG organized an all-out assault on the armed forces loyal to the military government. The forces of the TNDG wore uniforms displaying a symbol of the Thaugu national flag with the colours in reverse. In their offensive, they manage to capture strategically important locations that would allow the TNDG armed forces to march upon the capital.
18. On 27 May 2019, General-Lieutenant Asim Gyasis contacted President Mihn Sang of Ikaran and requested aid and assistance to the military government of Thaugu. President Mihn Sang promised that Ikaran would recognize the military government as the legitimate government of Thaugu, that Ikaran would send military equipment and military forces and that Ikaran would share intelligence with Thaugu's intelligence services. In return, President Mihn Sang requested that Thaugu cede the Xindu Province to Ikaran, which at that time was under the control of the TNDG. General-Lieutenant Asim Gyasis and his government agreed and the Xindu Province was ceded on 31 May 2019 via a bilateral treaty.
19. On 5 June 2019, Ikaran armed forces under the command of General Amun Thot entered into the Xindu Province and, after two weeks of intense fighting, routed the TNDG armed forces in the province. On 20 June 2019, Ikaran established full control over the province and its armed forces marched to Thanut to assist the military government of General-Lieutenant Asim Gyasis. Because of the Ikaran intervention, the military government of Thaugu was able to stabilize the front. On 16 July 2019, President Mihn Sang appointed General Amun Thot as the military advisor to the military government of Thaugu and as liaison officer to the government of Ikaran. In this capacity, Amun Thot was appointed and was present during the Thaugu military government's meetings discussing the ongoing hostilities against the TNDG. In addition, General Amun Thot received regular updates as to operations in the field and used that information to influence the decision-making in the Thaugu military government and military.
20. Over the coming months, the armed forces of the military government of Thaugu became increasingly intertwined with the Ikaran armed forces, which operated beside them. The Thaugu military government increasingly relied on intelligence from Ikaran. Because of lack of manpower, Ikaran officers and soldiers were embedded in Thaugu military units. Ikaran also provided much needed supplies, training and equipment. Because of the reliance on Ikaran intelligence and equipment, the Thaugu military government instructed its armed forces to comply with orders from embedded Ikaran officers. Thaugu officers occasionally refused to carry out the orders of embedded Ikaran officers, but were sanctioned by their superiors when this occurred.

Use of Agent Red

21. During August and September 2019, the armed forces of the TNDG were steadily repulsed all over Thaugu. However, Ikaran armed forces and forces of the Thaugu military government faced stiff resistance in an area 50 km east from the capital. This area is characterized by hilly terrain and dense jungles. It is inhabited by various indigenous clans that are loyal to the TNDG. With the help of the clans, TNDG forces managed to inflict severe casualties on their opponents, through the use of ambushes under jungle cover.
22. On 4 October 2019, Major Thom Tom, the local commander of the Thaugu military forces, was alerted to a large stockpile of Agent Red in a nearby container. Agent Red is a herbicide and defoliant used to clear jungle forests in order to turn the land into agricultural land. It is normally used under supervision and its use is severely restricted because of potential environmental harm and harm to human health. Side effects of exposure to Agent Red include: irritated eyes, nose and throat, burned skin, problems with breathing, and nausea. Long term exposure may considerably increase the likelihood of developing cancer. High concentration in ground water has been linked to birth defects, although low concentrations in ground water has not led to health problems apart from diarrhea and/or vomiting.
23. Major Thom Tom, frustrated with the lack of progress in the remote area, ordered the seizure of the Agent Red stockpiles on 9 October 2019 and used large quantities of Agent Red to clear jungle forests over the period of one week. Because of the use of Agent Red, during November 2019, the armed forces of the military government of Thaugu and armed forces of Ikaran made significant process in capturing the area with limited casualties. However, the high concentration of Agent Red caused rapid deforestation of the area, a surface of more than 50 km². In addition, water sources in an area of 100 km² have been affected to a considerable degree. Reports of the TNDG and international media showed large groups of fighters and civilians with different side effects of exposure to Agent Red. At least 2,500 people needed medical care. Concentrations of Agent Red in the ground water in the area made the water unsafe for consumption for at least one year. International health experts however disagreed about the long-term effects of the exposure as the concentration of Agent Red in the groundwater may reduce depending on its continued future use and the amount of rainfall over time. Nonetheless, all health experts agreed that consumption of water sources in the area would significantly increase the risk of birth defects and the occurrence of cancer.
24. Ikaran military reports from officers embedded in the Thaugu armed forces of the military government dated 6 October 2019 indicated that Ikaran military officers were concerned about environmental damage and the health risks to Ikaran armed forces due to exposure to Agent Red. Ikaran officers successfully forced Major Thom Tom to delay the use of Agent Red by threatening to stop support for local operations against the TNDG. On 8 October 2019, during a reception at the Ikaran embassy in Thaugu, General Amun Thot asked General-Lieutenant Asim Gyasis about the use of Agent Red and its potential dangers for the Ikaran military officers in the field. General-Lieutenant Asim Gyasis ensured General Amun Thot that Agent Red, as it was planned to be used, would not be dangerous for Ikaran military personnel if minimal precautions were taken. On 8 October 2019, the use of Agent Red was authorized by the military government of Thaugu and General Amun Thot ordered Ikaran armed forces to cease their opposition and take the necessary protective measures.

25. When the TNDG spread videos of the vast environmental damage caused by Agent Red, General-Lieutenant Asim Gyasis assured General Amun Thot that the videos were just propaganda. General Amun Thot again stressed that he wanted to ensure sufficient protection against the effects of Agent Red for Ikaran troops, but did not press the matter further. On 15 November 2019, General Amun Thot was present during a military award ceremony, in which General-Lieutenant Asim Gyasis honoured Major Thom with one of the highest military awards for his decision to use Agent Red.

The treatment of the captured fighters of the Thaugu International Brigade

26. Videos of the destructive effects of Agent Red quickly went viral in the Avalia Region. The TNDG called upon all citizens in the Avalia Region to come to its aid, promising permanent residency, a salary that was 20% higher than the average salary in the military forces in the region, land grants and retirement benefits. The TNDG justified the higher salaries on the basis that, as one of the poorest countries in the Avalia Region, offering the same salary as Thaugu armed forces would fail to attract foreign fighters to the cause of the TNDG. Although foreign nationals cannot own land under Thaugu law, the TNDG promised to change the law in the event that it was victorious.
27. Many former military personnel of the Member States of OSCAR travelled to Thaugu to fight on behalf of the TNDG. All foreign fighters were organized in a new military unit, the Thaugu International Brigade (TIB). The unit wears the same uniform as the other armed forces of the TNDG, with the same distinctive emblem, but in addition wears an armband with two red, crossed axes on a white background. During December 2019 and January 2020 the unit received training in camps in territories controlled by the TNDG.
28. On 7 February 2020, the TIB first saw action in the Xindu province, which at that time was under military control of Ikaran, with significant success. On 25 February 2020, General Amun Thot was recalled to Ikaran to participate in an urgent meeting on the military crisis in Xindu province, to be held the next day. During the meeting, in which General Amun Thot mostly dealt with the military operational response, the legal departments of the Ministry of Defence and Justice circulated a memo that the members of the TIB are to be regarded as mercenaries and do not deserve any protection under IHL. The memo further proposed the creation of special military commissions where captured members of the TIB would be tried for acts of terrorism and sabotage. Furthermore, the captured members would be defended by a military lawyer appointed by the Ikaran army. Although the lawyer had access to evidence against the captured members of the TIB, the lawyer could not contest the validity of the evidence or the means through which it was obtained, nor share all the details of the evidence with his/her client. Trials would be held in secret and behind closed doors.
29. Before the memo was discussed in detail, General Amun Thot left the meeting to catch a plane back to Thaugu. The records of the meeting show that General Amun Thot agreed in principle with the memo provided that members of the TIB could indeed be regarded as mercenaries under IHL. Accordingly, he agreed to instruct the forces under his command not to grant captured foreign fighters prisoner of war status if the memo were to be adopted. On 1 March 2020, General Amun Thot received official confirmation that the memo was adopted and the same day sent instructions to the Ikaran armed forces in the Xindu Province to not afford

captured TIB fighters with prisoner of war status. Although it is not clear how many members of the TIB were captured, at least 56 were prosecuted and convicted by the specially created military commission, with punishments ranging from 10 to 25 years imprisonment.

Requisition of labour from inhabitants of Thanut

30. Because of the use of Agent Red and the treatment of their nationals fighting in the TIB by Ikaran, OSCAR called a meeting on 14 April 2020 in which all members voted in favour of adopting a resolution that introduced crippling economic sanctions against Thaugu and Ikaran. In addition, the resolution called upon all Member States of OSCAR to render aid and assistance to the TNDG in reclaiming full control of Thaugu and to oust the military government and Ikaran armed forces supporting the military government. It finally stated that the transfer of the Xindu Province was illegal and void and called upon Ikaran to return the province back to Thaugu. The next day, the TNDG referred the situation in the Republic of Thaugu to the International Criminal Court.
31. During the period of May-July 2020, Member States of OSCAR delivered significant amounts of financial and military assistance to TNDG armed forces, including drones, artillery pieces, ammunition and small arms. On 15 July 2020, TNDG armed forces started a military operation to recapture the capital of Thanut. During one month of intense fighting, TNDG armed forces managed to break defensive lines held by the armed forces of the Thaugu military government and Ikaran armed forces. On 17 August 2020, the Thaugu military government and Ikaran ordered a general retreat to the capital, Thanut. Armed forces fighting on behalf of the Thaugu military government defected in large numbers to the TNDG, after being promised an amnesty for any crimes that they might have committed.
32. Because of the dire situation, on 16 August 2020, General Amun Thot requested President Mihn Sang to send additional Ikaran armed forces to assist the outmatched Thaugu military government armed forces. On 20 August 2020, additional Ikaran military forces arrived in Thaugu and took control of key strategic points in the capital. In a meeting with General-Lieutenant Asim Gyasis and the other members of the Thaugu military government, General Amun Thot stated that the military government must place all its armed forces under the direct command and control of Ikaran military forces. In addition, he demanded that the military government would immediately mobilize the inhabitants of the capital to prepare for the defence of the capital. If the military regime would not comply, Ikaran would immediately withdraw all assistance. Despite protestations, General-Lieutenant Asim Gyasis ultimately relented and agreed to requisition labour from the capital's inhabitants.
33. On 21 August 2020, General-Lieutenant Asim Gyasis announced through all media and posters that civilians were required to offer all necessary assistance to the Thaugu and Ikaran armed forces, short of actively participating in military operations, to defend the capital. Civilians were required to construct fortifications in the capital, dig trenches, deploy roadblocks and barbed wire, build ammunition warehouses, and set up field hospitals for the wounded and injured. Other civilians were required to provide catering for the armed forces and laundry duties, whereas civilians with a medical background had to offer medical assistance. Finally, civilians with a technical background were required to operate water supply systems, electricity systems and communication systems. The announcement also stated that civilians

who refused to assist, would be arrested and detained on national security grounds for the duration of the conflict. At least 20,000 civilians employed in the industries and / or with the requisite expertise mentioned in the announcement provided assistance to the Thaugu and Ikaran armed forces as ordered. It was also reported that at least 5,000 civilians were detained for refusing to comply with the announcement.

Capture and transfer of General Amun Thot to the ICC

34. On 28 August 2020, TNDG armed forces surrounded and besieged the capital Thanut. After two weeks of fighting during this siege, General-Lieutenant Asim Gyasis declared that the military government of Thaugu would surrender to the armed forces of TNDG on 12 September 2020. Upon hearing that the Thaugu military government intended to surrender, General Amun Thot ordered all remaining Ikaran armed forces to break out of the encirclement and to retreat to Xindu Province. Although the Ikaran armed forces successfully escaped, the helicopter evacuating General Amun Thot was hit by anti-aircraft fire and forced to land in territory controlled by TNDG armed forces. General Amun Thot, who sustained minor injuries only in the forced landing, was captured and his wounds treated.
35. On 1 October 2020, due to the crippling sanctions and the losses of Ikaran armed forces in Thaugu, mass-scale protests take place all over Ikaran. Police forces refused to subdue the protests and high-ranking officers of the Ikaran armed forces, requested that President Mihn Sang step down. On 4 October 2020, President Mihn Sang declared that he would step down and that new elections would be held. On 11 November 2020, the newly elected Ikaran government promised to return the Xindu Province to Thaugu and to withdraw its remaining armed forces from Thaugu. The Ikaran government equally declared that it would cooperate with the International Criminal Court.
36. On 14 January 2021, the International Criminal Court issued an arrest warrant for General Amun Thot, former President Mihn Sang, General-Lieutenant Asim Gyasis, Major Thom Tom, and former members of the Thaugu military government. The next day, the Thaugu government handed General Amun Thot over the ICC, where he was detained pending his eventual trial.

Charges

The Office of the Prosecutor presents the following charges against the defendant, Mr. Amun Thot:

Count 1

With regard to the use of Agent Red:

On the basis of Article 28(a) Rome Statute for failing to take all necessary and reasonable measures to prevent the use of Agent Red, an herbicide and defoliant agent, by Thaugu armed forces commanded by Major Thom Tom:

- The war crime of intentionally launching an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated in Article 8(2)(b)(iv) Rome Statute.

Count 2

With regard to the prosecution of members of the Thaugu International Brigade:

On the basis of Article 25(3)(d) Rome Statute, for contributing in the common plan to deny captured, foreign members of the Thaugu International Brigade fighting on behalf of the internationally recognized government of Thaugu the status of a prisoner of war:

- The war crime of wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial in Article 8(2)(a)(vi) Rome Statute.

Count 3

With regard to the requisition of labour from Thaugu nationals in the Thaugan capital of Thanut:

On the basis of Article 25(3)(b) Rome Statute, for ordering Thaugu nationals, through the Thaugu military regime, to offer aid and assistance to the Thaugu and Ikaran armed forces in their fight against the internationally recognized government of Thaugu:

- The war crime of compelling the nationals of the hostile party to take part in the operations of war directed against their own country in Article 8 (2)(b)(xv) Rome Statute.

Annex I: Applicable Agreements

Conventions	Republic of Ikaran	Republic of Thaugu
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	✓	✓
International Covenant on Civil and Political Rights	✓	✓
International Covenant on Economic, Social and Cultural Rights	✓	✓
Rome Statute of the International Criminal Court		✓

The 21st Red Cross International Humanitarian Law Moot (2023)

(An Inter-University Competition for Asia-Pacific Region)

Clarifications on Moot problem

A. General clarifications

1. What is the geography of both countries? Is there a map?
Ikaran and Thaugu are neighbouring countries, Ikaran to the west of Thaugu. Ikaran has access to the sea, whereas Thaugu is landlocked. The geography of Ikaran is characterized by plains and a few plateaus. Thaugu is mountainous and covered with dense jungles, with the exception of Xindu province, a plain. Xindu province has the most fertile land of Thaugu and, after the capital Thanut, is the most densely populated area in Thaugu. There are three major roads and four railways connecting Thaugu's border with Ikaran to the capital Thanut. Thanut has the only international airport in Thaugu.
2. What is the population of Thaugu/Thanut? What is the population of Ikaran?
The population of Thaugu is around 9 million, with 1 million living in the capital of Thanut. Ikaran has a population of 16 million.
3. Are people in Ikaran and Thaugu from the same race and ethnicity?
The inhabitant of Ikaran and Thaugu belong to the same racial group, but have distinct ethnicities (see clarification no. 5).
4. Who colonized Ikaran?
The actual colonizer of Ikaran has no bearing on the outcome of the case.
5. It is stated that both Ikaran and Thaugu have unique culture. What is the religion(s), language(s) and culture of people in Ikaran, Thaugu and Xindu?
Ikarans and Thaugans are different ethnic groups, with a distinct language and culture. The province of Xindu is comprised of 65% Thaugans and 35% Ikarans, all having the nationality of Thaugu. Ikarans and Thaugans follow the same religion, Theravada Buddhism.
6. Is Ikaran prevented from recognizing the military government of Thaugu under OSCAR Statute Article 5(2)? Does Ikaran's suspension from OSCAR nullify being bound to the Statute?
Ikaran's suspension from OSCAR does not affect its obligations under the OSCAR Statute,

including Article 5(2) OSCAR Statute. Article 5(2) OSCAR Statute has been consistently interpreted as preventing a member state from recognizing a government that became in power through unlawful means, such as military coups.

7. Does OSCAR Statute include collective defense clause like North Atlantic Treaty?
No, it does not.
8. Since Ikaran did not vote on the resolution for not recognizing the military government of Thaugu, but rather promised to recognize the military government as the legitimate government of Thaugu, can the ceding of Xindu Province from the military government of Thaugu to Ikaran be legitimate/lawful transfer of land?
Teams have to draw their own inference (if any)
9. Has TNDG been internationally recognised through further OSCAR resolutions or otherwise?
OSCAR does not recognize the military government as the legitimate government of Thaugu. OSCAR regards TNDG as an interim government representing the people of Thaugu, until a new government can be sworn in after elections. Some governments have however recognized the military government as the legitimate government of Thaugu.
10. Did either the TNDG or Thaugu Military Forces make a declaration under article 96(3) of Additional Protocol I?
No such declaration was made.
11. Has Ikaran or Thaugu made any reservations to the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights?
No reservations to the ICCPR and ICESCR were made.
12. In para. 14, which constitution did General-Lieutenant Asim Gyasis suspend, considering that the new constitution was never enacted into force?
General-Lieutenant Asim Gyasis suspended the old constitution, which was about to be replaced by the new constitution, accepted in the referendum.

B. Clarifications concerning count 1

13. How long is the deforestation caused by Agent Red expected to last? Is the recovery period expected to be long term?
Sufficient information is provided in the facts.

14. Is Agent Red a local pesticide within Thaugu that is unknown/foreign to Ikaran?
Agent Red is a famous, well-known herbicide and defoliant. Because of its potential side-effects it is banned in some countries, but is still widely used in other countries across the globe. Its use is legal in Thaugu and Ikaran.
15. Did Thom Tom know about the widespread, long-term, and severe damage which Agent Red could potentially cause? Further, was he aware that such damage would be clearly excessive in relation to concrete and direct overall military advantage anticipated?
You have to draw your own conclusions from the Statement of Facts whether Major Thom Tom was aware of the dangers inherent to the use of Agent Red.
16. In para. 23, it states that Agent Red caused a deforestation of a “surface of more than 50 km²”; how much “more” of a surface should we be deriving from this statement for estimating the scope of damage?
More than 50 km² but less than 60 km².
17. In paragraph 23, when it is stated that water sources in an area of 100 km² was “affected to a considerable degree”, what exactly does “affected to a considerable degree” entail?
“Affected to a considerable degree” means that the water is no longer safe for human or animal consumption, and that all of the negative side-effects of Agent Red may occur after consumption of the water.
18. In paragraph 23, it states that “Reports of the TNDG and international media showed large groups of fighters and civilians with different side effects of exposure to Agent Red.” Were these reports reliable sources accessible to the Ikaran military that could not be mistaken for propaganda?
The reports were initially made by reputable international media, followed by reports of NGOs and international organizations, in particular the UN.
19. What precautions were put in place to protect the Ikaran Troops from Agent Red?
Ikaran troops were given protective gear when operating in areas where Agent Red was deployed. Protective gear consisted of military hazmat suits (Level B (US)/type 2 (EU)).
20. Who does General Amun Thot answer to within the Thaugu military? Does Thot have ultimate control over Thaugu forces, or does he answer to an Ikaran superior such as General-Lieutenant Asim Gyasis?
There is no formal hierarchical relation between General-Lieutenant Asim Gyasis and

General Amun Thot. General Amun Thot is officially a military advisor to the military government of Thaugu and as liaison officer to the government of Ikaran. He has no official position in the military government of Thaugu, but because of the role Ikaran armed forces in the ongoing conflict, he has significant influence over the military government of Thaugu.

C. Clarifications regarding count 2

21. With respect to Count 2, are teams allowed to dispute the territorial jurisdiction of this court?
See point 4 of the Instructions to the Statement of Facts: “Counsel may, if relevant, address issues of conflict classification or gravity. Any other issues of jurisdiction and admissibility should be ignored.”
22. With respect to Count 2, it is clear that Xindu province was under military control of Ikaran at that time when the alleged crime took place, but is the Xindu province internationally recognized to belong to Ikaran, or Thaugu?
Teams have to draw their own inference (if any).
23. Were the members of the TIB directly recruited by TNDG and its promise of various private gains? Or were any sent by the member states of OSCAR to specifically provide TNDG with assistance?
Members of TIB were all volunteers and applied to join the TIB without any assistance from their respective governments. Volunteers would travel to zones in Thaugu under the control of TNDG and enlist there.
24. Were any of the captured members of TIB wounded or sick?
Some members of TIB were wounded when captured, but received care in accordance with international standards.
25. In para. 27, are all the TIB members former military personnel of the Member States of OSCAR?
Yes.
26. In para. 27, did the TIB get trained in the same territory as the national armed forces of the TNDG?
Yes.
27. In para. 27, do the emblems of the armed forces of the TNDG incorporate red axes, similar to the additional emblems of the TIB?

No, the red axes are a typical symbol of the TIB.

28. In para. 28, does the legal departments of the Ministry of Defence and Justice has a higher domestic authority over General Amun Thot?

The legal departments belong to the civilian branch of the government and have no direct authority over the armed forces.

29. In para. 28, prior to the appointment of the military lawyer for the captured TIB members, were the TIB members and the TNDG given a chance to be represented by an advocate or counsel of their own choice?

No, they were not.

30. In para. 29, when it is stated that the memo was “adopted”, who was responsible for its adoption?

The memo was adopted at the highest level of the government and signed by President Mihn Sang, the Minister of Justice, the Minister of Defence, and the Chairman of the Joint Chiefs of Staff.

31. Did TIB fighters continue fighting in Thaugu beyond the Xindu province? Specifically, did TIB fighters fight alongside TNDG forces in Thanut from 15 July 2020 onwards?

TIB fighters continued to fight alongside TNDG armed forces for the duration of the armed conflict.

D. Clarifications regarding count 3

32. In para. 33, are the activities required of the civilians specific to an urgent military planning? Or are they just unspecified activities in general?

The activities are specified in para. 33.

33. According to para. 33, “civilians were required to offer all necessary assistance” against their own country. However, can Ikaran be accused of having committed such a war crime under the Rome Statute despite the fact that Ikaran is not subject to the Rome Statute of the International Criminal Court according to the Annex I?

Teams have to draw their own inference (if any).

34. In para. 33, were civilians with medical backgrounds already offering medical care before the order was given? Likewise, were those possessing technical backgrounds already providing technical support? Were civilians with medical and technical background already performing duties required of them by Gyasis within their job scope as an employee (i.e., medical

assistance to armed forces, and operation of water, electricity, and communication systems respectively)?

Whereas some civilians occasionally provided medical treatment or technical services in the ordinary course of their profession or employment, the overall majority of the civilians concerned only carried out these tasks for the Thaugu military government after the adoption of the measures in the announcement.

35. In para. 33, did Asim Gyasis personally announced that civilians were required to participate in assisting military operations through the specified duties, or did he personally direct relevant agencies to do so?

The announcement was made in the name of General-Lieutenant Asim Gyasis, who actively oversaw the implementation of the measures in the announcement and used the various government departments to implement and enforce the measures in the announcement.

E. Transfer of General Amun Thot to the ICC

36. In para. 34, following the capture of Amun Thot, was Thot detained by the TNDG? General Amun Thot was captured and detained by the armed forces of TNDG.

37. In para. 35, the newly elected Ikaran government declared that it would cooperate with the International Criminal Court. Has Ikaran accepted the exercise of jurisdiction by the Court by declaration lodged with the Registrar?

See point 4 of the Instructions to the Statement of Facts: “Counsel may, if relevant, address issues of conflict classification or gravity. Any other issues of jurisdiction and admissibility should be ignored.”