



BEST MEMORIALS

ALSA INDONESIA MEMORIALS WRITING COMPETITION 2023

Faculty of Law Universitas Andalas

Jl. Universitas Andalas Limau Manis, Kecamatan Pauh, Kota Padang,
Sumatera Barat 25163

Telp: + 6282114798233

Email: contact@alsaindonesia.org

Website: alsa-indonesia.org

TEAM 720

THE INTERNATIONAL CRIMINAL COURT

SITUATION IN THE NTITA REGION

PROSECUTOR

V.

ASLAN TELUCKE

MEMORIALS FOR THE PROSECUTOR



THE 2023 ALSA INDONESIA MEMORIALS WRITING COMPETITION

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WRITTEN ARGUMENTS

COUNT ONE

ASLAN TELUCKE IS RESPONSIBLE AS A SUPERIOR IN SUBORDINATE RELATIONSHIP UNDER ARTICLE 28(b) OF ROME STATUTE FOR THE WAR CRIME OF ATTACKING CIVILIAN POPULATION UNDER ARTICLE 8(2)(b)(ii) OF ROME STATUTE

A. THE ATTACK CONSTITUTE AS A WAR CRIME IN TERMS OF ATTACKING CIVILIANS WITHIN THE JURISDICTION OF THE COURT

I. The attack conducted by Grostatidus Armed Forces (GAF) and General Jambein is a war crime of attacking civilians under article 8(2)(b)(i) of Rome Statute.

A. The perpetrator directed an attack

1. Attacks in the form of dropping bombs by the GAF in succession occurred on May 15 2023 at 5 am on the Godu Uchula River.
2. The attack had been planned and aimed at civilians, some of whom were members of the Godu Liberation Movement (GLM) who were carrying out Godu's rituals in the context of the 18th Demigodu at the *a quo* place and time.
3. This action was categorized as an attack because it was realized by launching 5 military aircraft, each carrying 250 bombs. The bombs will be dropped on targets in the Godu Uchula River area at the moment of the Godu ritual for the 18th Demigodu.
4. This attack caused casualties, including 500 elderly people, 200 women and children, and 22 others who were members of GLM or a total of 722 casualties due to the bomb attack carried out by GAF. The ratio of civilian casualties was greater than that of GLM members, so civilians felt greater losses as a result of this attack.

5. This attack resulted in hundreds of casualties, most of which came from civilians, so this was a prohibited attack and was not justified at all in terms of meeting military needs.¹

B. The object of the attack was a civilian population not taking direct part in hostilities

1. Civil society and GLM members were the main components in the casualties caused by attacks launched by the GAF. This component consists of 500 parents, 200 women and children, and 22 GLM members.
2. The attack launched by GAF had two different specific objectives in the scenario, where this attack was carried out aimed at two different objectives at once. First, this attack was categorized as an indiscriminate attack as regulated in article 51(4)(c) Protocol Additional to The Geneva Convention of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 (AP I) because this attack was carried out without considering the risks or possible effects so that the effects of this attack cannot be limited at all. Second, in this attack there were other objectives that did not differentiate between military interests or civilian objects that were not involved in hostilities so that civilians indirectly became the target of the attack.²

C. The perpetrator intended the civilian population not taking direct part in hostilities to be the object of the attack

- Knowledge of the perpetrator about the civilian status of the object of the attack
 1. Aslan Telucke ordered General Jambein to prepare an attack aimed at GLM without considering the risk of impacts resulting

¹ *Prosecutor v. Dario Kordić and Mario Čerkez* (2001), ICTY, Case No IT-95-14/2-A, Trial Judgment, [328]; *Prosecutor v. Pavle Strugar* (2005), ICTY, Case No IT-01-42-T, Trial Judgement, [280]; *Prosecutor v. Tihomir Blaskić* (2000), ICTY, Case No IT-95-14-T, Trial Judgment, [180].

² *Prosecutor v. Callixte Mbarushimana* (2011), ICC, Case No ICC-01/04-01/10, The Pre-Trial Chamber, [142]. This corresponds to a scenario where crime is perpetrated with two different specific objectives. First, namely military objects as regulated in Articles 51 and 52 of the AP I and simultaneously with the second, namely civil society which is not part of hostilities.

from the attack. The lack of risk analysis of attacks means that civilians who have no interest in war or any military conflict also become the objects of *a quo* attack.

2. The attack that was ordered to be carried out was aimed at the place where the Godu's Ritual was to be carried out which was clear and would definitely be attended by civilians so that in this case Alan Telucke knew for certain about the presence of civilians in the target area of the attack on 15 May 2023.
3. This shows that Aslan Telucke also clearly and convincingly includes civilians who are not involved in hostilities as the object of his attacks.³
4. In terms of the inner attitude of the perpetrator, Aslan Telucke, President of Grostatidus and a retired lieutenant general from the ministry of law and defense, certainly has a wise attitude in terms of decision making. In this case, Aslan Telucke had positioned himself to take the decision to order the attack on Godu's Ritual and had understood the consequences that this attack would have, namely the Godu civilians who would be the victims. A retired lieutenant general from the ministry of law and defense should really understand the consequences of an attack and in this case Aslan Telucke certainly understands what will result from this attack. In this case, Aslan Telucke's inner attitude is that he already knows (*dolus*) or more specifically is *dolus eventualis*.⁴

D. The conduct took place in the context of and was associated with international armed conflict

- Existence of an international armed conflict

³ *Ibid*, [138].

⁴ Herman Bakir, 'The Universal Character of Crime: The Mother of All Wounds That Never Healed' (2022) 6. [184]. *Dolus Eventualis* is when a person performs an action to achieve a certain purpose while at the same time he can imagine that if the person concerned carries out the intended action, other consequences may arise that are not his goal and which are also prohibited and punishable by statutory regulations.

1. The conflict that occurred in the Godu community came from an attack initiated by Aslan Telucke who was the president of Grostatidus. Aslan Telucke then ordered General Jambein as Military Supervisor Grostatidus to execute his plan through GAF troops.
2. This conflict is an international armed conflict involving two countries in the Ntita Region, namely the Republic of Grostatidus and the United Islands of Npaja. In this case, Npaja has intervened in this conflict.
3. Npaja's involvement in this conflict stems from the siding of Npaja President, Kroson, with Aslan Telucke during the presidential election in Grostatidus in 2022. This alignment was also strengthened by the Minutes of Meeting (MoM) between Kroson and Aslan Telucke, one of which stated that Kroson would provide Aslan Telucke with exclusive financial and security support during his campaign and term of office as president of the Republic of Grostatidus. Npaja is a country known for its successful weapons industry and sophisticated technology. In this case, it is very clear that Npaja will use weapons industry products to fulfill its support for Aslan Telucke.
4. This conflict occurred during the leadership of Aslan Telucke, in which case Npaja sent its weapons industry products to support the continuation of attacks aimed at Godu civilians. The bombs and other ammunition used in this attack were a form of Npaja's involvement in this armed conflict.
5. Npaja's intervention in this conflict shows that this conflict is an international armed conflict which has involved two countries, namely the Republic of Grostatidus and the United Islands of Npaja.⁵

⁵ *Prosecutor v. Germain Katanga and Mathieu Chui* (2008), ICC, Case No ICC-01/04-01/07, Pre-Trial Chamber I, [240]. The same pattern occurred in the Katanga and Chui cases, where Uganda intervened, one of which was the supply of weapons and ammunition in the conflict.

E. The perpetrator was aware of factual circumstances that established the existence of an armed conflict

1. In terms of fulfilling the elements of the article and determining the responsibility of the defendant, it is necessary to pay attention to the *mens rea* which also includes the *actus reus*.
2. *Mens rea* as required in Article 30 of the Rome Statute is a subjective element that supports the fulfillment of the elements of Article 8(2)(b)(i) of the Rome Statute. In this case, the defendant has a relationship with the consequences, that the defendant has intended to cause a consequence that has a negative connotation or is detrimental to other people. In other words, the defendant consciously had the intention to do something detrimental as a consequence⁶. This was demonstrated by Aslan Telucke who knew very well the consequences of his actions in ordering the attack during the Godu's ritual, namely the death of civilians and had ignored General Jambein's actions against the Godu civilians.
3. *Actus Reus*, which is an objective element contained in the *mens rea* in the defendant's actions, ordered General Jambein and GAF to carry out attacks which constitute a war crime based on this statute. Aslan Telucke had ordered and initiated attacks that resulted in casualties to civilians. It is important to know that this attack will cause many casualties which are not part of the hostilities and is a war crime. Apart from that, Aslan Telucke did not prevent or stop criminal acts that occurred and did not submit this case to be resolved through investigation and prosecution by authorized officials.

⁶ Article 30(2)(b), Rome Statute.

B. ASLAN TELUCKE IS CRIMINALLY RESPONSIBLE FOR GIVING COMMAND AND CONTROL TO CONDUCT THE WAR CRIME

- I. The defendant had effective command and control over the perpetrators involved in the crime
 1. The placement of a superior who has effective control over his subordinates who commit criminal acts can be placed with Aslan Telucke as the supervisor and General Jambein as his subordinate.
 2. Aslan Telucke's position as President in a Republic-shaped country means that he occupies the highest position and General Jambein occupies a lower position than Aslan Telucke. The characteristics of the orders made by Aslan Telucke are the same as those made by the supreme commander in a republic.⁷This shows that Aslan Telucke had effective control over General Jambein's actions *de facto* and *de jure*.⁸
 3. This is based on General Jambein's actions in carrying out attacks on orders from Aslan Telucke's hierarchical position as his superior; and Aslan Telucke should have the authority to stop or punish General Jambein for the criminal acts he had committed. Both of them have fulfilled the substantial elements of a superior-subordinate relationship so that in this case Aslan Telucke is justified in having a superior position and has effective authority to order, terminate or punish his subordinates.⁹

⁷ *Prosecutor v. Jean-Pierre Bemba Gombo* (2009), ICC, Case No ICC-01/05-01/08, Pre-Trial Chamber II, [410].

⁸ *Prosecutor v. Jadranko Prlić* (2013), ICTY, Case No. IT-04-74-T, Trial Chamber, [240].

⁹ *Ibid.*, [238].

COUNT TWO

ASLAN TELUCKE IS RESPONSIBLE FOR ORDERING UNDER ARTICLE 25(3)(b) OF ROME STATUTE FOR THE WAR CRIME OF ATTACKING RELIGIOUS AND HISTORIC BUILDINGS UNDER ARTICLE 8(2)(b)(ix) OF ROME STATUTE

A. THE ATTACK CONSTITUTE AS A WAR CRIME IN TERMS OF ATTACKING RELIGIOUS AND HISTORIC BUILDINGS WHICH ARE NOT MILITARY OBJECTIVES WITHIN THE JURISDICTION OF THE COURT

- I. Grostatidus Armed Forces (GAF) and General Jambein under the orders of Aslan Telucke committed the war crime of excessive attacking religious and historic buildings. Elements of crime under article **8(2)(b)(ix) are fulfilled.**

A. The perpetrator directed an attack

1. The attack was held on 18 May 2023 in the Godu Templa area right in Demigodu which was carried out by the Godu community. The attacks were carried out twice and resulted in damage to 5 historic religious temples and 2620 deaths originating from civilians dominated by children.
2. This attack was carried out by General Jambein using artillery shells containing white phosphorus targeting the Temple area and using several MGK-3000 drones which have technology to detect faces to carry out the attack.
3. This attack was carried out in violation of international humanitarian law¹⁰ because it used incendiary weapons¹¹ which resulted in thousands of civilian casualties because the weapons were directed at the temple which was still located in the middle of a concentration of civilians.¹²

¹⁰ Article 2(2), Protocol III on The Convention on Certain Conventional Weapons.

¹¹ Article 1(1), Protocol III on The Convention on Certain Conventional Weapons. Incendiary weapons are any kind of weapon which is designed to set fire to objects and cause burn injury to persons produced by a chemical reaction of a substance delivered on the target.

¹² Article 1(2), Protocol III on The Convention on Certain Conventional Weapons. "Concentration of civilians" means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of

B. The object of the attack was buildings dedicated to religion and historic monuments which were not military objectives, to be the object of the attack

1. The attack destroyed the temple building which had been built since the 7th century. The Godu community uses the temple for worship purposes and makes it a religious building. Apart from that, based on its history, the temple was founded in the 7th century and maintained, making it a historical building as well. This temple can be categorized as a monument based on the Convention Concerning the Protection of the World Cultural and Natural Heritage.¹³
2. Their existence, which is used as a place of worship as well as a historical monument, means that these temples cannot be categorized as military objects at all. This makes the destruction of these temples not something that can be justified from a military point of view because these temples must receive protection¹⁴ from their country, namely the Republic of Grostatidus.

C. The perpetrator intended buildings dedicated to religion which were not military objectives, to be the object of the attack

1. In order to fulfill the elements of this article, a *mens rea* is required which also includes the *actus reus* of the perpetrator. Aslan Telucke has deliberately targeted temples in the Godu Templa area which is a place with a high concentration of civil society.¹⁵ This was reasonable enough for Aslan Telucke to target these temples to achieve his goals.
2. The state, through Aslan Telucke as head of state, has violated the provisions of the Convention Concerning the Protection of the World

cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.

¹³ Article 1, Convention Concerning the Protection of the World Cultural and Natural Heritage. Monuments are any kind of architectural works which have universal value from its history.

¹⁴ Article 4, Convention Concerning the Protection of the World Cultural and Natural Heritage.

¹⁵ *Prosecutor v. Jadranko Prlić* (2013), ICTY, Case No. IT-04-74-T, Trial Chamber, [176]. To fulfill the elements of this article, the criminal must act with the intent to destroy protected property.

Cultural and Natural Heritage because it took a decision that resulted in the destruction of these historic temples.¹⁶

3. Aslan Telucke had enough reason to have the *mens rea* to target attacks on temples in the Godu Templa area and launch attacks through General Jambein.

D. The conduct took place in the context of and was associated with an international armed conflict

1. There is an element of international armed conflict which is interpreted as the presence of more than one country involved in this attack. In the attack that occurred on 18 May 2023, there were two countries involved in it, namely the Republic of Grostatidus and the United Islands of Npaja.
2. In carrying out his second attack, General Jambein was recorded as having used the MGK-3000 drone, which is an unmanned drone equipped with software to detect faces. This attack, which used several drones, resulted in more than 120 casualties, both civilians and GLM officials.
3. The existence of the MGK-3000 drone is proof that Aslan Telucke has indeed established a mutualistic relationship with Kroson which is strengthened by the Minutes of Meeting (MoM) meeting between Kroson and Aslan Telucke, one of which states that Kroson will provide Aslan Telucke with exclusive financial and security support during his campaign and tenure as president of the Republic of Grostatidus. The drone is a manifestation of the involvement of the United Islands of Npaja in the 18 May 2023 attack.
4. This armed conflict is categorized as an international armed conflict because of the intervention of the United Islands of Npaja in carrying out the attack, namely in the form of armed support.¹⁷

¹⁶ Article 6(3), Convention Concerning the Protection of the World Cultural and Natural Heritage.

¹⁷ *Prosecutor v. Germain Katanga and Mathieu Chui* (2008), ICC, Case No ICC-01/04-01/07, Pre-Trial Chamber I, [240]

E. The perpetrator was aware of factual circumstances that established the existence of an armed conflict

1. In terms of fulfilling the elements of the article and determining the responsibility of the accused, it is necessary to pay attention to the *mens rea* which also includes the *actus reus*.
2. *Mens rea* as required in Article 30 of the Rome Statute is a subjective element that supports the fulfillment of the elements of Article 8(2)(b)(ix) of the Rome Statute. In this case, the defendant has a relation with the consequences, that the defendant has intended to cause a consequence that has a negative connotation or is detrimental to other people. In other words, the defendant consciously had the intention to do something detrimental as a consequence
3. *Actus Reus*, which is an objective element contained in the *mens rea* in the defendant's actions, ordered General Jambein and GAF to carry out attacks which constitute a war crime based on this statute. Aslan Telucke had ordered and initiated attacks that resulted in damage to religious and historical buildings and casualties to civilians. This attack also violated ammunition regulations in war because this attack used white phosphorus which was prohibited in the convention.

B. ASLAN TELUCKE IS INDIVIDUALLY RESPONSIBLE FOR GIVING ORDERS TO CONDUCT THE WAR CRIME

- I. The perpetrator implied order to a subordinate
 1. The existence of the position and the relationship between superior and subordinate between Aslan Telucke and General Jambein means that Aslan has the facility to give orders to his subordinates to commit a crime.
 2. Through his orders, Aslan Telucke also influenced General Jambein to carry out criminal acts because his orders contained substantial

influence,¹⁸ namely the existence of elements of position and relationship between superiors and subordinates which must be carried out by subordinates.

3. Aslan Telucke has given orders as a superior from General Jambein as his subordinate to carry out this attack which is a war crime.

¹⁸ *Prosecutor v. Radovan Karadžić* (2016), ICTY, Case No. IT-95-5/18-T, Trial Chamber, [573].

PRAYER OF RELIEF

For these reasons the Prosecutor respectfully request this Honorable Court to adjudge and declare that:

- a. This court has jurisdiction to examine and adjudicate this case because it relates to the most serious crimes, namely war crimes, of concern to the international community as a whole Article 5 and Article 8 of the Statute.
- b. There are sufficient grounds to confirm charges against Aslan Telucke, thus indicating:
 1. Aslan Telucke is criminally responsible for giving command and control with respect to the war crime in Uchula River on 15 May 2023 under Article 28(b) of the Rome Statute.
 2. Aslan Telucke is individually responsible for giving orders with respect to the war crime in Godu Templa on 18 May 2023 under Article 25(3)(b) of the Rome Statute.

TEAM 720

THE INTERNATIONAL CRIMINAL COURT

SITUATION IN THE NTITA REGION

PROSECUTOR

V.

ASLAN TELUCKE

MEMORIALS FOR THE DEFENDANT



THE 2023 ALSA INDONESIA MEMORIALS WRITING COMPETITION

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Aslan Telucke does not have command responsible under article 28(b) of the Rome Statute respect to intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities as a war crime pursuant to Article 8(2)(b)(i) of the Rome Statute. 6

I. The War Crime of Directing Attacks against Civilian Population or Individual Civilians is not established 6

a. The perpetrator directed an attack. 6

b. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities. 7

c. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack. 7

d. The conduct took place in the context of and was associated with an international armed conflict. 9

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a. Aslan Telucke consciously disregarded information that the subordinates were committing crimes 10

b. The crimes were not concerned activities that were within the effective control of Aslan Telucke 12

Aslan Telucke does not have individually responsible under article 25(3)(b) of the Rome Statute respect to 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 as a war crime pursuant to Article 8(2)(b)(ix) of the Rome Statute. 13

I. The War Crime of Directing Attacks against Buildings dedicated to Religion is not established 13

a. The perpetrator directed an attack. 13

b. The perpetrator intended a religious building which were not military objectives, to be the object of the attack. 14

c. The conduct took place in the context of and was associated with an international armed conflict. 14

II. Aslan Telucke is not Individually Responsible for The War Crime 16

a. Aslan Telucke did not order, solicits or induces the commission of such a crime which in fact occurs or is attempted 16

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WRITTEN ARGUMENTS

Count One:

Aslan Telucke does not have command responsible under article 28(b) of the Rome Statute respect to intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities as a war crime pursuant to Article 8(2)(b)(i) of the Rome Statute.

I. The War Crime of Directing Attacks against Civilian Population or Individual Civilians is not established

a. The perpetrator directed an attack.

1. An action is classified as an "attack" if it uses acts of violence aimed at attacking and injuring civilians,¹ so as to fulfill the provisions as stipulated in Article 8(2)(b)(i) of the Rome Statute.
2. Civil society, either collectively or individually, must not be the object of attack. Unless they take a direct part in hospitality.² Although not specifically outlined in the Rome Statute, civil society is those who are not members of armed forces or organized armed groups. If civil society joins armed forces or organized armed groups, then they lose their rights to protection as civil society and become legitimate targets in armed conflict.³
3. Armed conflict is a conflict using weapons that occurs between a state and an organized group within the territory of a state.⁴
4. In this case, the order given by Aslan Telucke was to paralyze the opponent (an organized armed group), in this case the Godu Liberation Movement (GLM) under the leadership of Perce.
5. Perce and all GLM members do not have civil society status, because they directly took part in the armed conflict, as an organized armed group whose aim was to overthrow the government of Aslan Telucke.

¹ Prosecutor v. Bosco Ntaganda (2014), ICC, Case No ICC-01/04-02/06, Pre-Trial Chamber, [18].

² Canada, The Law of Armed Conflict at the Operational and Tactical Levels, Office of the Judge Advocate General, 13 August 2001, 716.2.

³ Ibid, 318.1.

⁴ Sassòli, M. (2003). Legitimate targets of attacks under international humanitarian law. HPCR Policy Brief, 75.

6. The conflict that occurred between the Grostatidus government under the leadership of Aslan Telucke and the GLM under Perce was an armed conflict between state organs and armed groups. This means that Aslan Telucke's order to paralyze Perce as an opposing party in an armed conflict cannot necessarily be interpreted as an "attack" as required by Article 8(2)(b)(i) of the Rome Statute.
7. Therefore, the element of Aslan Teluke as the perpetrator directed an attack cannot be fulfilled.

b. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.

1. Civil society is a party that is not part of an armed military group, nor is it a party involved in an armed conflict.⁵
2. Civil society is a protected party, as regulated in the Rome Statute and the Geneva Conventions of 12 August 1949. If an attack is carried out against someone whose status as a civil society cannot be ascertained, then that person needs to be considered a civilian and the attack must be canceled.⁶
3. International Humanitarian Law provides an explanation that parties who "take direct part in hostilities" or parties involved in armed conflict are not only assessed through concrete actions, but also through membership in an armed group.⁷
4. A person's membership in an armed group can make a person a legitimate target who "takes a direct part in hostilities" in an armed conflict, if that membership fulfills one of the following three elements: (1) continuity of actions carried out by the armed group, (2) have an identity as a member of an armed group, and (3) receive a specific assignment to carry out work related to an armed group.⁸

⁵ Article 50, Protocol I, The Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of International Armed Conflicts.

⁶ . Article 51, Protocol I, The Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of International Armed Conflicts.

⁷ Gaggioli, G. (2018). Targeting individuals belonging to an armed group. *Water. J. Transnat'l L.* , 51, 910.

⁸ Ibid, 911.

5. Referring to the analysis above, even though a person's membership in an armed group is not specifically described in International Humanitarian Law, a person's membership in an armed group with certain criteria makes him or her a legitimate target in an armed conflict.
6. In this case, Perce is the founder of the Godu Liberation Movement (GLM) which has 400,000 members. Furthermore, to fight against the Grostatidus government under Aslan Telucke, Perce carried out organized actions in the form of distributing weapons to GLM members and holding military training for GLM members from village to village.⁹
7. On January 1, 2023, the first attack was carried out by Perce together with 100,000 GLM members against several security posts on the coast and military soldiers located between Godu Valey and Calpita.¹⁰ Due to this attack, the Grostatidus government under Aslan Telucke declared GLM a separatist-terrorist-criminal organization and asked Jambein as general of the Grostatidus Armed Forces to kill Perce by any means.
8. Therefore, referring to the entire analysis above, it can be concluded that the object of the attack in this case was Perce as an individual who was not a legitimate target in the armed conflict that occurred between the Grostatidus government under the leadership of Aslan Telucke and the GLM armed group.

c. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.

1. Directing attacks against civilians means directing and deciding to continue carrying out attacks against civilians.
2. To fulfill the element that a defendant intentionally directed attacks against civilians, the *mens rea* requirements as stipulated in Article 30 of the Rome Statute must be proven. The defendant must be truly

⁹ Moot Problem, para 16.

¹⁰ Moot Problem, para 17.

proven to have directed attacks against civilians who were not involved in the armed conflict.¹¹

3. Furthermore, if it is proven that the attack was directed at non-civilians, but used methods that had the potential to injure many civilians. So, the attack had to be canceled.¹²
4. In this case, Aslan Telucke gave orders to Jambein to paralyze Perce (a legitimate target in the armed conflict).
5. Furthermore, in this case, Aslan Telucke never gave orders to Jambein to target attacks, and even carried out attacks on civilians who were not involved in the armed conflict.
6. That on May 14 2023, Jambein followed up on the order given by Aslan Telucke by carrying out an attack in the Uchula River area, using 5 military aircraft that consisted of 250 bomblets. The attack resulted in the loss of life of 772 people (of 500 elders, 200 women and children, and 22 GLM members), but failed to cripple Perce (the individual targeted in the armed conflict).
7. In this case, there is an inconsistency between the orders given by Aslan Telucke and the consequences caused by Jambein's attack. It released the attachment of the attack order given by Aslan Telucke with the consequences arising in the form of the death of civilians.
8. Considering that the mens rea element in the order given by Aslan Telucke, in the form of deliberate attack on civilians, cannot be proven concretely. So, this element cannot be fulfilled.

d. The conduct took place in the context of and was associated with an international armed conflict.

1. According to the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, armed conflict is a conflict that occurs when there is the use of armed force between states or prolonged armed violence between government authorities and organized armed

¹¹ Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (2008), ICC, Case No ICC-01/04-01/07, Pre-Trial Chamber, [271].

¹² Nche, L. (2022). Who is a Legitimate Target in International Humanitarian Law?. Master's Thesis in International Law and Human Rights. ÅBO Akademi, 75.

groups or between these parties. International Humanitarian Law divides types of international armed conflict into two types, namely international armed conflict (IAC) and non-international armed conflict (NIAC).

2. That IAC is a conflict *de facto* or a state of war between two or more countries (although not recognized by one of the countries), accompanied by the unilateral use of armed force.¹³
3. That IAC also implies the occurrence of conflict between the armed forces of two major participating countries (convention members).
4. In contrast to IAC, NIAC is an armed conflict with a certain level of intensity such as internal tension, riots, violence, and other similar things, and occurs within the territorial borders of a country. Armed conflicts classified as NIAC usually occur between: (i) government authorities and organized armed dissident groups or (ii) between such groups.¹⁴ This is also outlined in Article 8(2)(f) of the Rome Statute.
5. In this case, the conflict occurred between the Grostatidus government under the leadership of Aslan Telucke and the GLM as an organized group. Furthermore, this conflict cannot be categorized and associated as an international armed conflict because it meets the categories stated in Article 3 of the Geneva Conventions. Furthermore, referring to Article 8(2)(f) of the Rome Statute regarding non-international armed conflicts, also known as internal armed conflicts, occurring on the territory of a country. It involves armed confrontation between a state's armed forces and one or more organized non-state armed groups or between the groups themselves.¹⁵
6. There are differences between international armed conflict with non-international armed conflict, in international armed conflict, hostilities occur between two or more countries. The parties involved are usually recognized as sovereign entities and can engage in war on behalf of their respective countries. In this conflict, it does not involve entities

¹³ ICRC, 2016. Commentary on the First Geneva Convention. International Committee of the Red Cross.

¹⁴ Judge Joyce Aluoch, Judge Cuno Tarfusser and Judge Péter Kovács, 'Situation in Georgia'. [76].

¹⁵ ICRC, 2016. Commentary on the First Geneva Convention. International Committee of the Red Cross.

from two countries, but only involves a conflict between the Grostatidus government and GLM as a structured organization.

7. This means that the armed conflict that occurred in the territory of the Republic of Grostatidus is not an international armed conflict and this element cannot be fulfilled.

II. Aslan Telucke does not have Command Responsible for The War Crime

In this case, Aslan Telucke is responsible for all criminal acts committed by his subordinates (Jambein) in the form of attacks that result in the death of civilians, if they fulfill the following elements:

a. Aslan Telucke consciously disregarded information that the subordinates were committing crimes

1. The relationship between Aslan Telucke and Jambein is a free relationship between superior and subordinate (not tied to the military profession), as per the provisions relating to criminal sanctions regulated in Article 28 (b) Rome Statute.
2. In this case, Aslan Telucke asked Jambein to carry out an attack on one person who met the elements of being a legitimate target to be neutralized in the armed conflict between the Grostatidus government and the GLM.
3. Deaths of civilians resulting from attacks under Jambein's leadership, through falls bombs in the Uchula River area during celebrations Demigodu in the Godu Templa region.
4. Due to the occurrence of a criminal act which resulted in the death of civilians, Aslan Telucke can be declared to have intentionally ignored information regarding the criminal act committed by Jambein if he knew the following things:¹⁶
 - The number of illegal acts;
 - The type of illegal acts;
 - The scope of illegal acts;

¹⁶ Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier, Nzuonemeye, and Innocent Sagahutu (2011), ICTR, Case No ICTR-00-56-T, Trial Chamber, [1197-1998], [1918-1920].

- The time during which the illegal acts occurred;
 - The number of troops involved
 - The logistics involved, if any;
 - The geographical location of the acts;
 - The widespread occurrence of the acts;
 - The tactical tempo of operations;
 - The *modus operandi* of similar illegal acts;
 - The staff involved; and
 - The location of the commander at the time.
5. That in this case, Aslan Telucke could be declared negligent in controlling his subordinates in executing the orders given. However, in this case it is also clear that Aslan Telucke did not have specific information regarding the mechanism carried out by Jambein, including the consequences that would be experienced in trying to paralyze Perce, so this resulted in the absence of considerations that Aslan Telucke could take in stopping the crime. which was carried out by Jambein.¹⁷
 6. This means that Aslan Telucke did not intentionally ignore his subordinates committing crimes, so this element cannot be fulfilled.

b. The crimes were not concerned activities that were within the effective control of Aslan Telucke

1. Aslan Telucke can be subject to criminal liability for actions carried out by his subordinates (Jambein), if he has "effective command and control" over every action carried out by his subordinates.¹⁸
2. Aslan Telucke holds the status of Jambein's superior. However, this does not mean that Aslan Telucke has the "effective command and control" that he should have as *de facto* military commanders.
3. It was not proven that Aslan Telucke asked Jambein to carry out attacks on civilians, or carried out attacks on Perce as legitimate targets using methods that resulted in the death of civilians.

¹⁷ Prosecutor v. Zdravko Mucic, Hazim Delic, Esad Landzo and Zejnil Delalic; Celebici camp (1998), ICTY, Case No IT-96-21-T, Trial Chamber, [393].

¹⁸ Prosecutor v. Jadranko Prilic (2013), ICTY, Case No IT-04-74-T, Trial Chamber, [245].

4. Furthermore, all actions carried out by Jambein can specifically be stated as not in accordance with the requests requested by Aslan Telucke, and not based on orders carried out by Aslan Telucke consistently.
5. Referring to point 4, all acts of attack carried out by Jambein were outside the command and control of Aslan Telucke. Therefore, Aslan Telucke cannot be held criminally responsible for all legal consequences resulting from the Jambein attack and this element cannot be fulfilled.

Count Two:

Aslan Telucke does not have individually responsible under article 25(3)(b) of the Rome Statute respect to 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 as a war crime pursuant to Article 8(2)(b)(ix) of the Rome Statute.

I. The War Crime of Directing Attacks against Buildings dedicated to Religion is not established

a. The perpetrator directed an attack.

1. The second attack on Perce was carried out by Jambein at the request of Aslan Telucke, on May 18 2023, precisely on Demigodu's anniversary.
2. Considering that the first attack carried out by Jambein at Aslan Telucke's request failed and Perce failed to be neutralized, then on May 16 2023, Aslan Telucke confirmed to Jambein regarding the attack mechanism that would be used in the second attack.
3. Aslan Telucke had given clear orders to Jambein to carry out close-range attacks to minimize damage, especially additional civilian casualties.
4. However, the orders and warnings given by Aslan Telucke as superior were not implemented by Jambein. This was proven by the death of a

total of 2,620 civilians and the damage to 5 historical temples in the attack that occurred around Godu Templa, Godu Valley.

5. This means that the attack carried out by Jambein was not in line with the orders given by Aslan Telucke, taking into account civilian casualties. The assembly needs to consider the possibility that Jambein was a disobedient subordinate and carried out attacks on buildings of worship unilaterally.
6. Therefore, Aslan Telucke did not fulfill the elements of action, because he was proven to have given orders to Jambein to carry out specific attacks on buildings of worship, as regulated in Article 8(2)(b)(ix) of the Rome Statute.

b. The perpetrator intended a religious building which were not military objectives, to be the object of the attack.

1. The damage to 5 temples due to attacks using armed weapons around Godu Templa carried out by Jambein, was an unplanned result. As described in the moot problem "some of the artillery shells reached the temples and destroyed 5 temples". Referring to this explanation, this means that the attack was not directed directly at buildings of worship.
2. Apart from the analysis in point 2, the defendant Aslan Telucke was not proven to have given concrete orders to attack buildings of worship, in this case the Godu Templa.
3. On the other hand, to fulfill the element of directing an attack on a building of worship, the prosecutor needs to prove that Aslan Telucke had a position over another party, gave orders to another party to commit a criminal act, and was aware of all the legal consequences of the criminal act he was ordered to carry out.¹⁹
4. In this case, there was a discrepancy between the orders given by Aslan Telucke and the attack mechanism adopted by Jambein. This means that the element that Aslan Telucke deliberately ordered or directed the attack on a place of worship cannot be fulfilled.

¹⁹ Prosecutor v. Radovan Karadzic (2016), ICTY, Case No IT-95-5/18-T, Trial Chamber, [573].

c. The conduct took place in the context of and was associated with an international armed conflict.

1. According to the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, armed conflict is a conflict that occurs when there is the use of armed force between states or prolonged armed violence between government authorities and organized armed groups or between these parties. International Humanitarian Law divides types of international armed conflict into two types, namely international armed conflict (IAC) and non-international armed conflict (NIAC).
2. That IAC is a conflict *de facto* or a state of war between two or more countries (although not recognized by one of the countries), accompanied by the unilateral use of armed force.²⁰
3. That IAC also implies the occurrence of conflict between the armed forces of two major participating countries (convention members).
4. In contrast to IAC, NIAC is an armed conflict with a certain level of intensity such as internal tension, riots, violence, and other similar things, and occurs within the territorial borders of a country. Armed conflicts classified as NIAC usually occur between: (i) government authorities and organized armed dissident groups or (ii) between such groups.²¹
5. In this case, the conflict occurred between the Grostatidus government under the leadership of Aslan Telucke and the GLM as an organized group. Furthermore, this conflict cannot be categorized and associated as an international armed conflict because it meets the categories stated in Article 3 of the Geneva Conventions. Furthermore, referring to Article 8(2)(f) of the Rome Statute regarding non-international armed conflicts, also known as internal armed conflicts, occurring on the territory of a country. It involves armed confrontation between a state's

²⁰ ICRC, 2016. Commentary on the First Geneva Convention. International Committee of the Red Cross.

²¹ Judge Joyce Aluoch, Judge Cuno Tarfusser and Judge Péter Kovács, 'Situation in Georgia'. [76].

armed forces and one or more organized non-state armed groups or between the groups themselves.²²

6. There are differences between international armed conflict with non-international armed conflict, in international armed conflict, hostilities occur between two or more countries. The parties involved are usually recognized as sovereign entities and can engage in war on behalf of their respective countries. In this conflict, it does not involve entities from two countries, but only involves a conflict between the Grostatidus government and GLM as a structured organization.
7. This means that the armed conflict that occurred in the territory of the Republic of Grostatidus is not an international armed conflict and this element cannot be fulfilled.

II. Aslan Telucke is not Individually Responsible for The War Crime

a. Aslan Telucke did not order, solicits or induces the commission of such a crime which in fact occurs or is attempted

1. A person can be declared to have ordered, solicited or persuaded another person to commit a crime, if their actions substantially contributed to the commission of the crime.²³
2. That "ordering", "requesting" and "persuading" are essentially included in the broader category of "inciting" or "encouraging other people to commit crimes", in the sense that these words refer to actions carried out by other people. where someone is influenced by another person to commit a crime.²⁴
3. The element of "requesting" is different from the context of orders given by superiors as specified in Article 6(3) of the Rome Statute. An order to commit a crime in Article 8(2) of the Rome Statute does not require the existence of a superior and subordinate relationship, either

²² ICRC, 2016. Commentary on the First Geneva Convention. International Committee of the Red Cross.

²³ Prosecutor v. Kvočka et al. (2001), ICTY, Case No ICTY-98/30-1, Trial Chamber, [252].

²⁴ Prosecutor v. Laurent Gbagbo (2014), ICC, Case No ICC-02/11-01/11-656-Red, Pre-Trial Chamber, [243].

between the defendant and someone who is ordered to commit a crime.²⁵

4. However, the defendant can be declared to have "ordered" to commit a criminal act if he is proven to have authority over another person, so that he can exert influence, coercion, or order to commit a criminal act.²⁶
5. In this case, Aslan Telucke has the position of a superior who has authority over Jambein and can give orders to Jambein to carry out a criminal act, in this case an attack on a certain object.
6. However, the main problem in this case is that there are legal consequences that exceed the orders given. The attack in the Godu Templa area carried out by Jambein which resulted in the damage to 5 historical temples and the death of 2,620 people, was not in accordance with the orders given by Aslan Telucke.
7. If the error charged to Aslan Telucke is as regulated in Article 8(2)(b)(ix) in the form of intentionally attacking a building of worship which was not a military objective. Therefore, Aslan Telucke cannot be said to have requested, directed or persuaded Jambein to direct attacks on buildings of worship and this element cannot be fulfilled.

b. Mens Rea

1. Determination of the elements that make up *mens rea* a crime, has proven to be very difficult and controversial. Nevertheless, the elements necessary to form *mens rea* crimes consist of:²⁷
 - a. intent to commit the underlying offense
 - b. knowledge of the wider context in which the crime was committed.

²⁵ Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier, Nzuonemeye, and Innocent Sagahutu (2011), ICTR, Case No ICTR-00-56-T, Trial Chamber, [1191].

²⁶ Prosecutor v. Dario Kordic and Mario Cerkez (2001), ICTY, Case No IT-95-14/2-A, Trial Chamber, [388].

²⁷ Prosecutor v. Zoran Kupreskic (2000), ICTY, Case No IT-95-16-T, Trial Chamber, [332].

2. According to the court, if someone has committed a crime or committed other acts that are part of a crime, then the *mens rea* has been fulfilled.²⁸
3. In this case, the prosecutor has not been able to prove that Aslan Telucke had the intention and actually directed the attack at a building of worship, in this case the Godu Templa which is an ancient site protected under Article 8(2)(b)(ix) of the Rome Statute.
4. Referring to description number 2, the action taken by Aslan Telucke in the form of giving orders to Jambein to murder Perce was part of the crime committed by Jambein.
5. However, the order given by Aslan Telucke was to paralyze Perce as a legitimate target due to leading a rebellion against the government of Grostatidus. This means that Aslan Telucke's intentions cannot be concluded as an intention to attack Godu Templa and civil society.
6. If Aslan Telucke is to be charged with individual criminal responsibility as regulated in Article 25(3)(b) of the Rome Statute, then the prosecutor needs to provide evidence containing a concrete explanation that Aslan Telucke ordered Jambein to attack buildings of worship and target the death of civilians.
7. In connection with the absence of any evidence that proves the elements of *mens rea* possessed by Aslan Telucke, in connection with the attack in the Godu Templa area which was deliberately aimed at destroying a building of worship (historical temple). Therefore, this element cannot be fulfilled.

²⁸ Prosecutor v. Kunarac, Kovac, and Vukovic (2001), ICTY, Case No IT-96-23-T and IT-96-23/1-A, Appeals Chamber, [102-103].

PRAYER FOR RELIEF

Based on the rules and evidence stated above, The Defence respectfully requests this Honorable Court to adjudge and declare that:

1. Aslan Telucke is not criminally responsible for giving command and control with respect to the attack in Uchula River on 15 May 2023 under Article 28(b) of the Rome Statute.
2. Aslan Telucke is not individually responsible for giving orders with respect to the attack in Godu Templa on 18 May 2023 under Article 25(3)(b) of the Rome Statute.