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Pace Law School**

SITUATION IN THE STATE OF VINELAND

PROSECUTOR'S MEMORIAL

The Office of the Prosecutor

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STATEMENT OF FACTS

1. In September 2001, a peace agreement forming a new coalition government in Vineland was signed between Vineland's central government and three rebel groups who had been fighting for four years. In January 2002, the Security Council authorized UNVINE, a six-month peacekeeping mission to verify the cessation of hostilities, set up a security zone for civilians and refugees, and make preparations for the forthcoming elections in the various regions. Member States Katonia and Ridgeland each sent soldiers and paratroopers to the UNVINE mission. Prob. para. 1. Katonia, Ridgeland, and Vineland are parties to the Geneva Conventions. Clarification 08/17/2005, q. 4.
2. Efforts to renew the UNVINE mission in Vineland were underway in June 2002 when the Katonian representative requested immunity for its soldiers from prosecution by the International Criminal Court. Prob. para. 3; Clarification 8/12/2005. Katonia agreed to a 15 day extension of the UNVINE mission pending further negotiation in the Security Council regarding this request. Prob. para. 3. The Statute of the ICC entered into force on 1 July 2002 among the State Parties to the Statute, including Vineland. Prob. para. 4. At the time the Statute entered force in Vineland, there was no agreement of immunity for Katonian or Ridgeland soldiers on Vineland territory.
3. On 10 July 2002, UNVINE peacekeeping forces outside Bridgetown, including Katonian and Ridgeland paratroopers, were attacked by an unidentified armed group in Vineland. News reports in neighboring countries reported that the attack was paid for by "foreign oil companies interested in keeping the UN peacekeepers out of the region." Prob. para. 5.
4. Soon after 10 July 2002, Katonia and Ridgeland sent 200 paratroopers into the northern Vineland region where the Bridgetown bombing took place. The paratroopers launched a ten-day aerial bombing of the area surrounding Bridgetown. Prob. para. 6. Following the bombings, thousands of acres of farmland and large quantities of crops and livestock were destroyed. *Id.*
5. Katonian and Ridgeland paratroopers also surrounded areas outside Bridgetown and conducted house-to-house raids. Katonian and Ridgeland paratroopers detained approximately 50 men and 20 boys from the area. The men and boys were removed from their homes and taken to a detention compound. Four of the detainees were tortured in an isolated area of the camp; one of these men died of a heart attack following his torture. Prob. para. 6. When the Katonian and Ridgeland paratroopers removed the cordon and left the area, many Vineland families reported that the paratroopers had stolen personal property. *Id.*

6. On 20 July 2002 Katonian and Ridgeland paratroopers conducted a bombing mission in Vineland. This bombing destroyed three villages, killed three hundred (300) civilian men, women, and children, and seriously injured five hundred and fifty (550) more. Prob. para. 10. The paratroopers had been ordered to bomb ANVA headquarters. *Id.*

7. While Katonian and Ridgeland paratroopers were operating in Vineland, the Security Council adopted Resolution 1234 (2002) that requested the ICC not to commence or to proceed with investigation or prosecution of any case arising from acts or omissions relating to a UN established or authorized mission, like that of UNVINE. S/RES/1234 (2002); Prob. para. 7. Clarification 08/17/2005, q. 2. This request was adopted on 12 July 2002 and was made pursuant to Article 16 of the Rome Statute. It was to be effective from 1 July 2002 to 1 July 2003. Prob. para. 7.

8. On 1 August 2002, Katonia and Vineland signed an “Article 98 Agreement.” Each country made a reciprocal agreement to refrain from surrendering the other’s soldiers to the ICC without consent. *Agreement Between the Government of Katonia and the Government of Vineland Regarding the Surrender of Persons to the International Criminal Court* (1 August 2002); Prob. para. 9. Ridgeland made no such agreement with Vineland, though it did make an agreement with Katonia. *Id.*

9. On 20 July 2002, the same day as the bombings that killed 300 Vineland citizens, ANVA insurgents captured three Katonian and two Ridgeland pilots who had landed near the bombing site because of engine trouble. Prob. para. 10. It is believed that these pilots were part of the bombing missions that killed Vineland civilians. *Id.* Also on 20 July 2002, four Ridgeland military police officers (“MPs”) were recognized by Vineland women as being part of the group that had taken the women’s husbands and sons during house-to-house raids earlier in July. Prob. para. 11. These MPs were handed over to ANVA insurgents. *Id.*

10. The MPs and Pilots were held in Vineland by ANVA insurgents from July 2002 to October 2003. Prob. paras. 11-13. Some ANVA members pushed for the immediate execution of these paratroopers. A non-governmental organization persuaded ANVA to grant the paratroopers a military tribunal, but Katonia and Ridgeland threatened further military attacks if the paratroopers were not released immediately. Prob. para. 12. The Secretary-General of the UN sent his special representative (“SRSG”) to ANVA and proposed two alternatives to a military tribunal: try the pilots in a neutral third country or in the ICC. *Id.* No third country could be

found that would both be willing to try the paratroopers and be acceptable to Katonia and Ridgeland, who continued to threaten immediate reprisal if the paratroopers were not released. *Id.* After fourteen months of negotiations between the SRSG and ANVA, ANVA insurgents agreed to surrender the Katonian and Ridgeland paratroopers (Defendant MPs and Pilots) to the ICC through the Secretary General. *Id.*

11. Following the surrender of Defendants to the ICC in October 2003, the Prosecutor initiated an investigation *proprio motu* into the crimes of the defendants in accordance with article 15. United Nations: Rome Statute of the International Criminal Court, U.N. Doc. No. A/CONF. 183/9 (July 17, 1998), Art. 15; Clarification 08/25/2005(2), q. 1. After concluding that there is a reasonable basis to proceed with the investigation, the Prosecutor submitted a request for authorization of an investigation to Pre-Trial Chamber I in accordance with Article 15(3). *Id.* Pre-Trial Chamber I authorized commencement of the investigation after considering that there was reasonable basis to proceed and that the case appears to fall within the jurisdiction of the court in accordance with Art. 15(4). United Nations: Rome Statute of the International Criminal Court, Art. 15(4); Clarification 08/25/2005(2), q. 4.

ARGUMENT

THE COURT MAY EXERCISE JURISDICTION OVER THE CRIMES DEFENDANTS COMMITTED.

12. In July 2002, Defendant Military Police (“MPs”) from Katonia and Ridgeland entered Vineland and conducted raids of civilian homes. Prob. para. 6. They captured 50 men and 20 boys in the raid and removed their captives to a detention area where Defendant MPs proceeded to torture four men. *Id.* One of the men died following his torture. *Id.* Defendant Pilots simultaneously conducted a ten-day aerial bombing which destroyed thousands of acres of Vineland farmland and killed villagers’ crops and livestock. *Id.* These Defendant Pilots from both Katonia and Ridgeland also attacked three Vineland villages, killing 300 civilians and seriously injuring 550 men, women, and children. Prob. para. 10.

13. The actions of Defendant MPs and Pilots are serious international crimes as defined in Arts. 5, 7, and 8 of the Rome Statute. The killing of civilians, destroying of civilian crops and livestock, and torture committed by Defendants are both crimes against humanity and crimes of war. *Infra*, paras. 25-43 (discussion of elements of crimes). The Court, therefore, has jurisdiction

over the crimes alleged in this case. United Nations: Rome Statute of the International Criminal Court, U.N. Doc. No. A/CONF. 183/9 (July 17, 1998) (hereinafter “Rome Statute”), Art. 5.

THE COURT MAY EXERCISE JURISDICTION OVER THE DEFENDANTS UNDER ARTS. 12 AND 13.

Defendants Committed Crimes in the State of Vineland, a Party to the Rome Statute, and Are Subject to Jurisdiction of the Court.

14. Defendants entered into Vineland, a party to the Rome Statute, for the expressed purpose of retaliating for previous events. Prob. para. 4, 6. In Vineland, Defendant MPs and Pilots committed numerous crimes in violation of article 5. Prob. para. 6; Rome Statute, art. 5; *infra*, paras. 25-43. Following the surrender of Defendants to the ICC in October 2003 through the offices of the Secretary General of the UN, the Prosecutor initiated an investigation *proprio motu* into the crimes of the defendants in accordance with article 15. Clarification 08/25/2005(2), q. 1; *See* Rome Statute, Art. 15(1). After concluding that there is a reasonable basis to proceed with the investigation, Prosecutor submitted a request for authorization of an investigation to Pre-Trial Chamber I in accordance with Article 15(3) of the Rome Statute. Pre-Trial Chamber I authorized commencement of the investigation after deciding that there was reasonable basis to proceed and that the case appears to fall within the jurisdiction of the court. Clarification 08/25/2005(2), q.4; Rome Statute, Art. 15(4).

15. Each of the crimes committed by Defendant MPs and Pilots occurred on the territory of Vineland, a party to the Rome Statute. Article 11 grants the Court temporal jurisdiction over each of these crimes, as they occurred after the Rome Statute entered into force in Vineland. Rome Statute, Art. 11; Prob. para. 5-6, 10. The Court has authority to exercise jurisdiction over these crimes pursuant to Art.13 because the Prosecutor has initiated an investigation in accordance with Art. 15. Rome Statute, Art. 13(c). In addition, the two necessary preconditions to the exercise of jurisdiction have been met in accordance with Art. 12. First, Vineland accepted the jurisdiction of the Court when it became a signatory of the Rome Statute. Rome Statute, Art. 12(1). Second, the Court has jurisdiction over crimes committed by Defendants in Vineland because Vineland is a party to the Statute. Rome Statute, Art. 12(2)(a). Since the crime occurred in Vineland, a party to the Statute, the court does not need the acceptance of Katonia or Ridgeland in order to exercise jurisdiction over Defendants. Rome Statute, Art. 12(2) (“the Court may exercise its jurisdiction if one or more of the following States are parties to this Statute...”).

The Case Against Defendants Is Admissible Under Articles 17 and 18.

16. Under Art. 17 of the Rome Statute, a case is only inadmissible in four instances: (1) where the case is being investigated or prosecuted by a State with jurisdiction over the crime, (2) where the case has been investigated or prosecuted by such a State, (3) where the person has already been tried for the crime, or (4) where “the case is not of sufficient gravity to justify further action by the Court.” Rome Statute, Art. 17(1)(a)-(d). None of these factors for inadmissibility are met, therefore the case is admissible in this Court.

17. No State has acted to investigate or prosecute these crimes. Prob. para. 13. Katonian and Ridgeland nationals committed serious international crimes on the territory of Vineland, therefore Vineland, Katonia, and Ridgeland are the only states with jurisdiction over the crimes of Defendants. Prob. para 6, 10.; *see* Rome Statute, Art. 12. Pursuant to Article 18, the Prosecutor notified Vineland, Katonia, and Ridgeland that an investigation had commenced. Neither Katonia nor Ridgeland informed the Court that it commenced investigations of the crimes committed by their nationals, and neither state requested that the Court defer to it the investigation of Defendants’ crimes. Prob. para. 13. Vineland has issued an official statement that it has no intention to exercise jurisdiction over Defendants. *Id.* Therefore, the conditions for admissibility of this case, set out in Article 17(1)(a)-(c) of the Rome Statute, are met.

18. The condition set out in Art. 17(1)(d), that the case is of sufficient gravity to justify action by the Court, has also been met. The case against Defendants concerns the killing of 300 civilian men, women, and children, the injury of 550 civilians, the kidnapping of 50 men and 20 boys, and the torture of four men. Prob. para. 6, 10. Each of these actions is a crime under the Rome Statute and each is of sufficient gravity to justify prosecution by the Court. The statements of the United Nations Security Council illustrate the concern the international community has placed on crimes committed against civilians in times of armed conflict. On 18 September 1999, the Security Council adopted a resolution strongly condemning “the deliberate targeting of civilians in situations of armed conflict as well as attacks on objects protected under international law,” and called on all parties “to put an end to such practices.” S.C. Res. 1265, U.N. SCOR, 54th Sess., U.N. Doc. S/RES/1265 (1999). The President of the Security Council reiterated these concerns this year. Statement by the President of the Security Council, 5209th Meeting, UN. Doc. S/PRST/2005/25 (2005). Defendants did not put an end to the practice of targeting civilians in situations of armed conflict. Instead, in early July 2002, Defendant MPs deliberately targeted

Vineland civilians in house-to-house raids. Prob. para 6. Defendant Pilots conducted a ten-day aerial bombing destroying thousands of acres of farmland and killing large quantities of crops and livestock. *Id.* On 20 July 2002, Defendant Pilots killed more than 300 civilians. Prob. para 10. These crimes are “the most serious crimes of international concern,” Art. 1, and the case against Defendants is therefore admissible in this Court. Rome Statute, Art. 17(1)(d).

The Security Council Has Not Requested a Deferral of Investigation or Prosecution In Accordance With Article 16.

19. The Court has jurisdiction over the crimes and the Defendants and this case is admissible before the Court. *Supra*. In some circumstances, the Court may be requested by the Security Council to postpone prosecution that would otherwise be properly commenced. Rome Statute, Art. 16. The Security Council has made this request before, but it has not done so in this case. On 12 July 2002, the Security Council, acting under Chapter VII of the UN Charter, used its authority under Art. 16 and requested that the Court refrain from investigation or prosecution of personnel “from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation.” S.C. Res. 1234, 4046th Meeting, U.N. Doc. S/RES/1234 (2002); Prob. para 7. If this request was effective against the actions of Defendants, it is not effective now. Art. 16 requires that requests of the Security Council to defer prosecution last only for a period of twelve months. Rome Statute, Art. 16. The Security Council recognized the need to renew such a request every twelve months when it adopted Res. 1234, which states that the resolution is effective between 1 July 2002 and 1 July 2003. S/RES/1234. The Security Council expressed the intention to renew the request “for further twelve-month periods for as long as may be necessary,” and it has never renewed this request. *Id.* Therefore, Res. 1234 is not applicable to the current prosecution of Defendants. *Id.*

20. Res. 1234 was not applicable to the prosecution of Defendants even when it was effective. The Resolution covers “acts or omissions relating to a United Nations established or authorized operation.” S/RES/1234. Defendant MPs and Pilots did not act as part of the UNVINE authorized operation. Prob. para. 6. UNVINE troops were sent to Vineland to “verify cessation of hostilities, to set up a security zone for civilians and refugees, and to make preparations for the forthcoming elections in the various regions.” Prob. para. 1. The 20 July 2002 bombing was not related to the operations of UNVINE. Instead of executing a strike of ANVA headquarters, Defendant Pilots destroyed three villages, killed 300 civilians, and seriously injured 550 men, women, and children. Prob. para 10. Similarly, the acts of Defendant

MPs were not related to the operations of UNVINE as authorized by the United Nations. Instead of acting as peacekeepers, Defendant paratroopers from both Katonia and Ridgeland were sent to Vineland after each country had deployed its UNVINE forces. Defendant Pilots conducted a ten-day aerial attack on Vineland civilians in retaliation of a 10 July 2002 attack on peacekeeping troops. Prob. para 6. This attack, the house-to-house raids, detention of more than 70 men and boys, torture of men, the destroying of thousands of acres of farmland, and the theft of civilian property were in no way sanctioned by UNVINE. *Id.* These crimes do not relate to UNVINE operations and are not specified by Res. 1234. Therefore, Res. 1234 does not apply to this case.

The Art. 98 Agreement Between Katonia and Vineland Regarding Surrender of Persons to the Court Does Not Affect the Court's Ability to Prosecute Defendants.

21. On 1 August 2002, Katonia and Vineland entered into an Art. 98 agreement regarding the surrender of persons to the Court. *Agreement Between the Government of Katonia and the Government of Vineland Regarding the Surrender of Persons to the International Criminal Court* (1 August 2002) (hereinafter "Agreement"). According to the Rome Statute, the Court has only two obligations pursuant to an Art. 98 agreement: to not request the surrender of a defendant subject to an Article 98 agreement and to not request assistance from a State that would require the State "to act inconsistently with" an Article 98 agreement. Rome Statute, Art. 98 (1). The Court has made neither of these requests. Art. 102 defines "surrender" as "the delivering up of a person by a State to the Court, pursuant to this Statute." Rome Statute, Art. 102(a). Defendants were not delivered to the Court by the Court's own request, they were transferred through a negotiation between ANVA leaders and a Special Representative of the Secretary General. Prob. para. 12-13. This independent surrender does not affect the Court's ability to proceed against the Katonian Defendants. Art. 98 only limits the Court's power to request the surrender of a person: it does not prohibit the independent surrender of Katonian Defendants to the Court, nor does it contemplate the subsequent prosecution after a surrender has been made. Rome Statute, Art. 98(1)-(2).

22. As party to the Rome Statute, Vineland is bound by the rules and principles of the Statute. Rome Statute, Art. 86. It is prohibited from entering into subsequent agreements that would defeat the object and purpose of the Statute. Vienna Convention on the Law of Treaties (hereinafter "Vienna Convention"), Art. 18(a); James Crawford SC et al., Joint Legal Opinion: In the Matter of the Statute of the International Criminal Court and in the Matter of Bilateral Agreements Sought by the United States Under Article 98(2) of the Statute 23 (2003). The

preamble to the Agreement states “that Vineland, by becoming a State Party to the Rome Statute of the International Criminal Court, has expressed its commitment to be bound by the rules and principles embodied therein.” The Preamble to the Rome Statute recalls “that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” By entering into this agreement, both Vineland and Katonia recognized that Vineland is bound by the Rome Statute and must exercise criminal jurisdiction over Katonian perpetrators of international crimes. Agreement, Preamble para. 3-4.

23. Katonia is not bound by the Rome Statute, but in the Agreement it “expressed its intention to investigate and to prosecute where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by officials, employees, military personnel or other nationals of Katonia.” At this time, Vineland has not exercised its jurisdiction over the crimes of Defendants and has issued an official statement that it has no intention of doing so. Prob. para. 13. Katonia has made no statement on the surrender of Defendants to the Court, nor has it begun an investigation in its own courts. Prob. para. 13. If the Court does not prosecute the defendants, they will not be tried for the crimes committed in Vineland. This frustrates the purpose of the Rome Statute: to create a court with “the power to exercise its jurisdiction over persons for the most serious crimes of international concern” that is “complementary to national criminal jurisdictions.” Rome Statute, Art. 1. Because Vineland is assumed to be in good faith when it signed the Agreement, the Agreement cannot be read to frustrate the purpose of the Rome Statute. *See Vienna Convention, Art. 31(1)*. In order for the Agreement to be valid, it cannot take away complementary jurisdiction from the Court when neither Vineland nor Katonia has exercised jurisdiction over Defendants.

24. Alternatively, if the agreement is read to prohibit the Court from initiating prosecution, then the Agreement is invalid on its face. The Agreement would purport to take away complementary jurisdiction in the very instance for which the Court was created: when a serious international crime has been committed and no state can be found in which to try the perpetrators. If the Agreement takes away the Court’s complementary jurisdiction over Katonian Defendants, then Vineland has promised to refrain from transferring Katonian persons to the Court without ensuring that either Katonia or Vineland would investigate and prosecute Katonian perpetrators of serious international crimes. As such, the Agreement would be invalid and would not prohibit the prosecution of Katonian Defendants in this case.

DEFENDANTS COMMITTED CRIMES AGAINST HUMANITY AND WAR CRIMES AS DEFINED BY THE ROME STATUTE.

25. Defendant MPs committed both crimes against humanity and war crimes when they conducted house-to-house raids, pillaged villages, forced Vineland citizens into detention camps, and tortured four men. Prob. para. 6; *infra* paras. 26-37. Defendant Pilots also committed crimes against humanity and war crimes when they bombed Vineland villages killing and injuring civilians and destroying civilian farmland which is required for survival. Prob. para. 6, 10; *infra* paras. 26-30, 38-43. In addition to the specific elements of crimes which Defendants committed, discussed *infra* paras. 31-43, the common elements of crimes against humanity and of war crimes are also met. *Infra* paras. 26-30.

Defendants Actions Satisfy The Common Elements Of Crimes Against Humanity.

Defendant MPs and Pilots directed their attacks against a civilian population.

26. The first requirement for a crime to be a crime against humanity is that the act be directed against a civilian population. *See, e.g., Elements of Crimes, ICC-ASP/1/3(B) (2000)* (hereinafter “Elements”), Art. 7 (1)(a)(2). The term *civilian* includes all non-combatants within the meaning of common Article 3 of the Geneva Conventions. *Prosecutor v, Tadic, Judgment, IT-94-1-T, May 7, 1997, para. 637* [hereinafter “*Tadic*”]. The assaults by Defendants were conducted in villages and areas that are heavily populated by civilians. Prob. para. 6. Defendant MPs conducted house-to-house raids in civilian villages. *Id.* In the bombing attacks, Defendant Pilots made no known attempts to limit their strikes to military targets; as a result, the damage to civilian lives and property was more than merely collateral. Three hundred people died in one bombing attack on 20 July 2002. Prob. para. 10. While it is true that some “insurgents” were found among the targeted Vineland civilians, Prob. para. 6, “a population does not lose its civilian character when combatants are present within the population.” M. Boot, in: Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article (1999)*, article 7, p. 127. As the International Criminal Tribunal for Rwanda (ICTR) found, “...it is clear that the targeted population must be of a predominantly civilian nature.” *Tadic* at para. 638. The area around Bridgetown where Defendant MPs attacked is predominately civilian: the targeted houses, crops, and livestock were not military. Prob. para. 6. The people killed and injured by Defendant Pilots are civilians.

Prob. para. 10. The presence of certain non-civilians in the midst of the Vineland villages does not change the civilian character of the Defendants' target population. *See Tadic* at para. 638.

The aerial bombing attacks by Defendants were both widespread and systematic.

27. Defendants' crimes also meet the second requirement for crimes against humanity: they are widespread and systematic. *See, e.g.*, Elements, Art. 7 (1)(a)(2). The requirement that the crimes are widespread or systematic is disjunctive. *Tadic* at para. 646. A crime need only be widespread or systematic to satisfy the requirement. Still, Defendants' crimes meet both of these standards. The terms widespread and systematic were defined by the ICTR in *Prosecutor v. Akayesu*:

The concept of 'widespread' may be defined as massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. The concept 'systematic' may be defined as thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources.

Prosecutor v. Akayesu, Judgment, ICTR-96-4, September 2, 1998, (hereinafter "*Akayesu*"), para 580. The bombings executed by the Defendant Pilots between the dates of 10 and 20 July 2002 were widespread as the aerial raids spanned a minimum of ten days and were directed against the general population of Bridgetown and the surrounding areas. Moreover, the attacks were systematic as the bombings and the house-to-house raids of Defendant MPs were a part of a thoroughly organized assault in execution of a common policy of retaliation enacted by the governments of Katonia and Ridgeland. Both governments ordered the attacks and sent in troops. Prob. paras. 6, 10. The fact that Defendants may have been ordered to systematically commit crimes against humanity does not relieve them from criminal responsibility. Rome Statute, Art. 33.

The Attacks By Defendant MPs Satisfy the Common Elements of War Crimes under Art. 5.

28. Defendant MPs and Pilots committed war crimes as specified in Article 8 of the Rome Statute and the Elements of the Crimes. *infra* paras. 31-43. These "grave breaches" committed by Defendants are contemplated by the Geneva Conventions and have two common elements: (1) the victim or victims were protected under one or more of the Geneva Conventions and Defendants were aware of this fact, and (2) the conduct took place in the context of and was associated with an international armed conflict and Defendants were aware of this fact. Rome Statute, Art. 8; *see, e.g.*, Elements, Art. 8(2)(a)(i)(2)-(5).

The persons and property attacked by Defendant MPs and Pilots were protected under the Geneva Conventions.

29. The civilian population enjoys the “general protection against dangers arising from military operations,” and shall not be made the object of attack. *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims in International Armed Conflict* (hereinafter “Protocol I”) (1977) 1125 U.N.T.S. 3, Art. 51, para. 1-2. The Vineland civilians became targets of Defendant MPs during house-to-house raids and in detention camps. Prob. para. 6. These victims found themselves “in the hands of” Katonian and Ridgeland MPs, paratroopers of countries of which the victims are not nationals. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Aug. 12, 1949, 75 U.N.T.S. 287, (hereinafter “Convention IV”), Art. 4. Vineland civilians also became the targets of Defendant Pilots during aerial raids and a bombing attack of three villages. Prob. para. 10. These victims were also “in the hands of” Katonian and Ridgeland pilots as required by Article 4 of the Convention IV. *See id.* Vineland is a party to the Geneva Conventions, so these Vineland victims are protected under the Geneva Conventions. Convention IV, Art. 4. Defendants purposely targeted Vineland residents, and therefore knew that their victims belonged to an adverse party to the conflict. *See* Prob. para. 6, 10. The requirement that Defendants be “aware of the factual circumstances that established” the victims’ protected status is therefore met. *See, e.g.* Elements, Art. 8(2)(a)(i)(2); Elements, Footnote 33.

An international armed conflict existed in Vineland

30. Katonia and Ridgeland forces entered Vineland and attacked Vineland civilians. Prob. para. 6, 10. The entry of Katonia and Ridgeland forces to the State of Vineland makes the conflict international in character. The International Tribunal for the Former Yugoslavia wrote that an armed conflict exists “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.” *Tadic* at para. 70. Furthermore, “non-international armed conflicts might become internationalized by the fact that one or more States become involved in the conflict...” A. Zimmerman, in: Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article* (1999), pp. 173, 267. The presence of two States in the armed conflict raises the conflict to one of international standing. Defendants knew they were attacking targets of another country, and so the requirement that

Defendants be aware that an international armed conflict existed is met. *See, e.g.* Elements, *Introduction*; Elements, Art. 8(2)(a)(i)(5).

Defendants' Crimes Satisfy the Specific Elements of Crimes Under Art. 5.

Defendant MPs forcibly and unlawfully transferred civilians

31. Defendant MPs forcibly transferred 50 men and 20 boys to detention camps in Vineland. This action satisfies the elements of deportation and forcible transfer of population and unlawful deportation and transfer. Elements, Arts. 7(1)(d), 8(2)(a)(vii)-1. The elements of forcible transfer under Article 7 and unlawful transfer under Article 8 are similar. Both require that the perpetrator transfer one or more persons to another State or location. Defendants did this when they transferred 70 Vineland civilians to a detention camp. Prob. para. 6. Furthermore, there are no indications that the men and boys detained were insurgents or even sympathetic to the insurgency. All the evidence suggests that the detainees were civilians who were unlawfully taken from their homes and held. Prob. para. 6.

32. The Article 7 crimes against the humanity of deportation or forcible transfer of population includes a requirement that the transfer must be forcible. Elements, Art. 7(1)(d)(1). Defendant MPs did forcibly take 70 men and boys from their homes and relegated them to a detention camp for an indefinite period. Footnote 12 to the Article states that “the term ‘forcibly’ is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, ...or by taking advantage of a coercive environment.” There are no indications that the victims proceeded to the camp willingly, rather they were rounded up during house-to house raids. Prob. para. 6. Defendant MPs conducted exceedingly violent attacks in the area surrounding Bridgetown, and their house-to-house raids meet the requirement of coercion or force under Art. 7(1)(d)(1) of the Elements of Crimes.

Defendant MPs unlawfully confined Vineland civilians and deprived the detainees of their liberty.

33. The Defendant MPs committed further crimes by detaining the 70 men and boys after the victims were unlawfully taken from their homes. Prob. para. 6. Elements, Art. 7(1)(e), 8(2)(a)(vii)-2. Art. 7(1)(e) prohibits the imprisonment of one or more persons or the serious deprivation of one or more person’s physical liberty. *Id.* In determining whether a person was severely deprived of liberty, the Court must take into account whether the detainee was subject to torture or other cruel, inhuman, or degrading treatment or punishment. M.Boot, p. 138.

Defendant MPs' torture and confinement of the four men severely curtailed the men's liberty and therefore violated Article 7. *See* Prob. para. 6.

34. The detainees' internment at the detention compound also implicates Article 8 against unlawful confinement. In the act of unlawful confinement, "the perpetrator confined or continued to confine one or more persons to a certain location." Elements, 8(2)(a)(vii)-2. By holding the detained persons at the compound, Defendants MPs committed the war crime of unlawful confinement. *See* Prob. para. 6.

Defendant MPs pillaged civilian property.

35. Defendant MPs committed the war crime of pillage under Article 8. Elements, Art. 8(2)(b)(xvi). Pillaging is defined as the appropriation of certain property with the intent to deprive the owner of the property. *Id.* Defendant MPs stole various items of personal property from homes during the raids. Prob. at para. 6. Defendant MPs were not authorized to take the property nor did military necessity require the confiscation of personal items.

Defendant MPs tortured and treated the detainees inhumanly.

36. Defendant MPs tortured four men removed to the Vineland detention camp. Prob. para. 6. As a general principle of international law, no one shall be subject to torture, whether civilian or combatant. The Elements of Crimes 7(1)(f) explains that in the act of torture, the perpetrator inflicts severe physical or mental pain upon one or more persons under the control or in the custody of the perpetrator. Art. 8(2)(a)(ii)-1 of the Elements includes the requirement that the physical/mental pain be inflicted for the purposes of obtaining information or a confession. While the details of the instances of torture are sparse, it is clear that Defendant MPs subjected the men to severe physical pain for the purpose of obtaining information. Therefore, Defendants committed the crime of torture, violating both Art. 7(1)(f) and 8(2)(a)(ii) of the Elements of Crimes.

37. In addition to the crime of torture, the Defendants' acts of inflicting severe pain on the four men also violates the war crime of inhuman treatment. Elements, Art. 8(2)(a)(ii)-2. As with torture, inhuman treatment also encompasses the infliction of "severe physical or mental pain or suffering upon one of more persons." Once the elements of torture are proven, the elements of inhuman treatment are necessarily proven. Therefore, Defendant MPs have satisfied the elements of inhuman treatment.

Defendant Pilots committed numerous war crimes and crimes against humanity by killing 300 Vineland civilians and injuring 550.

38. Defendant Pilots did willfully kill and murder 300 civilians in direct contravention of Rome Statute articles 7 and 8. Elements of Crimes Articles 7(1)(a) and 8(2)(a)(i) define the crimes of murder and willful killing as the killing of one or more persons. Defendants failed to properly target ANVA headquarters, the attack exceeded what was warranted by the military objective of the operation and the result was the murder of 300 civilians. Prob. para. 10.

39. Defendant Pilots are also responsible for the war crime of excessive incidental death, injury, or damage. Elements, Art. 8(2)(b)(iv). The poorly planned and executed bombing of 20 July 2002 caused "...death or injury to civilians or damage to civilian objects...that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated." Elements, Art. 8(2)(b)(iv), para. (1) and (2).

40. The three decimated villages were neither military objectives, nor defended by military personnel. For their assault of the civilian villages, the Defendants are responsible for the attack of undefended places under Art. 8(2)(b)(v) and the attack of civilians under 8(2)(b)(i). Elements.

41. For those civilians who were spared their lives but suffered severe injury from the bombing, Defendant Pilots are accountable for the willful causing of great suffering. Elements, Art. 8(2)(a)(iii). The Elements of the Crimes explains the act of willfully causing great suffering as causing "great physical or mental pain or suffering to, or serious injury to body of health of, one or more persons." Elements, 8(2)(a)(iii), para. (1). The serious injuries inflicted on the survivors by Defendant Pilots satisfy the requirements for the willful causing or great suffering.

Defendant Pilots targeted and destroyed civilian property.

42. Defendant Pilots indiscriminately bombed the general area of Bridgeport. The ten-day aerial raid primarily damaged the civilian population and civilian property. Prob. at para. 6. This destruction of property was wanton, extensive, and not justified by military necessity. It is therefore a war crime of destruction of property. Elements, Art. 8(2)(a)(iv)(1)-(3). Because this property was not a military objective, Defendant Pilots also committed the war crime of attacking civilian objects. Elements, Art. 8(2)(b)(ii)(2).

43. Military forces have a duty to distinguish between the civilian population and combatants, as well as between military objects and civilian objects. Protocol I, Art. 48. Stefan Oeter, *Methods and Means of Combat*, in: Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts* (1995), pp. 105, 119. The farmland, crops, and livestock were not

military targets. *See* Prob. para. 6. The attack which destroyed this property primarily damaged the civilian population. *Id.* In fact, there is no evidence that the property destroyed had any purpose other than for civilian use. *Id.* As Stefan Oeter explains, "...all methods and means of warfare which primarily damage the civilian population...are prohibited." Stefan Oeter at 119. Defendant Pilots therefore violated Articles 8(2)(a)(iv) and 8(2)(b)(ii) of the Elements of Crimes.

Defendants' Actions Were in Retaliation Against Civilians and are Prohibited Under the Geneva Conventions.

44. The excessive ten-day bombing measures commenced 10 July 2002 were in retaliation for an attack on UNVINE peacekeeping forces by unidentified armed groups in Vineland. Prob. para. 6. Though some actions against the unidentified armed groups would be permissible, reprisals against civilians are unlawful and prohibited under the Geneva Conventions. Protocol I, Art. 51(6); *see also*, *Geneva Convention Relative to the Treatment of Prisoners of War*, Aug. 12, 1949, 75 U.N.T.S. 135, Art. 33;

45. Defendant Pilots staged the bombings in the "general area of the attacks." Prob. para. 6. They created an inexact and ill-defined attack zone whereby damage to civilians and civilian property would not only be inevitable but also be out of proportion to any military advantage gained. Defendant Pilots disregarded the "elementary considerations of humanity" and conducted a reprisal bombing against a heavily populated civilian area. *See Prosecutor v. Kupreskic*, Judgement, ICTY 1, January 14, 2000, (hereinafter "*Kupreskic*") para. 525.

46. On 20 July, Defendant Pilots, again exercised a policy of indiscriminate targeting and initiated in an aerial attack which resulted in 300 civilian casualties. Customary international law and the law of war consistently hold that military attacks must be directed at a specific military target. Indiscriminate methods of warfare which cause substantial damage to civilians are unlawful. *Kupreskic* at para. 524; Protocol I, Arts. 57, 58. By bombing civilian areas, Defendant MPs and Pilots have shown a blatant disregard for the fundamental principles of human rights and have no defense for their actions.

CONCLUSION

47. Defendant MPs and Pilots committed serious international crimes on the territory of Vineland, a party to the Rome Statute. Defendants have not been investigated or prosecuted in any State Court. Accordingly, this Court should exercise its jurisdiction over Defendants and their crimes to prosecute Defendants for their crimes.

CERTIFICATION OF TEAM MEMBERS

We hereby certify that the memorial for ----, is the product solely of the under signed and that the undersigned have not received any faculty or other assistance, other than that allowed for in the Rules, in connection with the preparation of this memorial.

/s/ team