



**Australian  
Red Cross**



**CONFERENCE 2022**

7 – 12 JULY  
MEANJIN

**INTERNATIONAL HUMANITARIAN LAW  
MOOT**

**PROSECUTOR**

**v**

**CHARLES M. KURNS**

*before*

**THE INTERNATIONAL CRIMINAL COURT AT THE HAGUE**

Australian Red Cross and the Australian Law Students' Association extend their thanks to Mr Liam MacAndrews for his central role in the development of this moot problem.

## **CONTENTS**

|   |    |
|---|----|
| INSTRUCTIONS .....                                | 3  |
| Proceedings.....                                  | 3  |
| Facts and evidence.....                           | 3  |
| Procedure .....                                   | 3  |
| Jurisdiction and admissibility .....              | 3  |
| Applicable law.....                               | 4  |
| INDICATIVE AUTHORITIES AND RESEARCH MATERIAL..... | 4  |
| Indicative authorities .....                      | 4  |
| Key IHL documents .....                           | 4  |
| STATEMENT OF AGREED FACTS .....                   | 5  |
| CHARGES .....                                     | 12 |
| ANNEXURE A.....                                   | 13 |
| Map of Brooking and surrounds.....                | 13 |
| ANNEXURE B.....                                   | 14 |
| National Security Order No. 24 .....              | 14 |

## **INSTRUCTIONS**

### **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.'<sup>1</sup> The accused may 'object to the charges' and 'challenge the evidence presented by the Prosecutor'.<sup>2</sup>

### **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.

### **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.

Teams should address the specific charges and modes of liability set out in this document. Alternative charges and modes of liability need not be considered.

### **Jurisdiction and admissibility**

Counsel may, if relevant, address issues of conflict classification or gravity. Any other issues of jurisdiction and admissibility should be ignored.

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<sup>1</sup> Rome Statute, Article 61(5).

<sup>2</sup> Ibid.

## 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 recognised norms and standards.*
- 2 *The Court may apply principles and rules of law as interpreted in its previous decisions.*

## INDICATIVE AUTHORITIES AND RESEARCH MATERIAL

### Indicative authorities

- *Rome Statute of the International Criminal Court (1998)*
- *Elements of Crimes under the Rome Statute*

### Key IHL documents

- IHL Treaties: <https://ihl-databases.icrc.org/ihl>
- Customary IHL: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>
- ICRC Commentaries to the Geneva Conventions 1949 and Additional Protocols: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>

## STATEMENT OF AGREED FACTS

### Background

1. The Republic of Brooking (**Brooking**) is a large (population 55 million), economically developed nation situated in the southern hemisphere sub-tropics. Brooking gained independence from a larger colonial power, the State of Ullmania, in 1989.
2. The capital city of Brooking is Simonia (population 8 million), located in the country's West, near the foot of the McAllister Ranges, a mountain range that serves as a border with neighbouring state, Nallyrand). The East and South coasts of Brooking run along the Earlean Sea. On the Northern-most part of this coastline is the Rockiet Peninsula, a large land-mass connected to the remainder of Brooking's territory by a narrow slither of land one kilometre wide. A map of Brooking is located at **Annexure A**.
3. The city of Cyprell lies on the Rockiet Peninsula. It is the largest city in Brooking (population 11 million), being a business/financial hub, boasting a higher GDP per-capita for its residents, being a major tourist destination, and having large ports (used for civilian and military purposes).
4. Brooking has an advanced economy, a well-resourced military, and a strong agricultural sector. It is a multicultural and secular nation.
5. Since its independence, Brooking has been a presidential democracy. The Brookingian Constitution provides, inter alia, that presidential elections are held every five years, there are no term limits on presidents, and the president is formally the head of the Brooking military. The Constitution also sets out procedures for executive government processes, including that decisions of the national cabinet on matters of national security require a two-thirds majority vote, but that the President holds a veto power on these decisions.
6. When Brooking gained independence, its first elected President was Hannah Summerfield. President Summerfield was a highly popular leader, overseeing Brooking's strong economic development as well as the nurturing of a vibrant and pluralistic civil society. She made Brooking an active member of the international community through its accession to many multilateral treaties and participation in international organisations. As a result, President Summerfield was returned to office in four subsequent elections. However, much to the great shock of the nation, President Summerfield suddenly died in office in 2011.
7. In the following election, the people of Brooking elected Charles M. Kurns as the nation's new President. Kurns, a tycoon of the energy industry, was elected on a platform of continuing former President Summerfield's legacy.
8. Towards the end of President Kurns' first term in office, however, his government began to pursue more extreme policies that caused friction between different segments of Brooking's society. Nevertheless, in 2016 Kurns won re-election.

## The government crackdowns

9. President Kurns' second term in office saw a continuation of this trend. In particular, Kurns increasingly pursued measures to silence political dissent, employed widespread state surveillance on the civilian population, and gave favourable economic treatment to Western Brooking companies with personal connections to Kurns and his associates. For example, in late 2019, shortly after an investigation commenced into allegations of bribery concerning Kurns and his Finance Minister, Ruby Joseph, the Brooking Federal Police (**BFP**) Commissioner was suddenly (and without explanation) removed from office.
10. By mid-2020, the conduct of Kurns and his government led to significant civil unrest across Brooking. One of the government's most prominent critics was the Mayor of Cyprell, Frank Scorpio. Mayor Scorpio was a charismatic entrepreneur, whose business empire – WorldIn Inc. – owned entities ranging from major agricultural operations (including dairy factories and sugarcane plantations) to high profile sporting clubs. On 10 October 2020, Scorpio posted a video on his (widely followed) social media accounts, in which he said:

*I urge all freedom loving people of Brooking to resist this monstrous government led by an ogre. We can no longer be intimidated. Join our political force, the Rocket Resistance Movement to reclaim our great nation!*

11. On 16 October 2020, widespread anti-government protests broke out across Brooking, particularly in Cyprell and Simonia. Many protesters brought banners displaying 'Rocket Resistance Movement' or 'RRM'. Although the protests began peacefully, BFP repression of them led to numerous outbreaks of violence, which rapidly escalated into rioting in Simonia.
12. Responding quickly, President Kurns used special Constitutional authority to assemble a National Security Cabinet, comprised of only a handful of relevant ministers. In a meeting on 22 October 2020, the Cabinet immediately resolved to implement National Security Orders (**NSOs**) imposing a curfew on Simonia, military checkpoints across the capital city, as well as allowing the military to search premises for 'security or public order concerns'. Sensing the threat to his government, Kurns wrote in a message that night to all Brooking military and BFP personnel:

*Compadres, the violent scenes on the streets of our nation have required the government to act decisively to restore control and order. I place blame squarely at the feet of the RRM. It is imperative that we crush the resistance fighters by at least the start of summer.*

13. In the following weeks, numerous non-governmental organisations (**NGOs**) reported that enforcement of the NSOs was disproportionately targeted at persons originating from the Rocket region, and businesses associated with them. Sporadic outbreaks of violence (which were quickly repressed by the BFP) continued throughout this time.

## Attacks of the Rock-Rippers

14. In the morning of 8 November 2020, two bombings occurred in Simonia. During peak hour, a bomb was detonated on a major commuter roadway – the 59<sup>th</sup> Street Bridge – killing dozens of people, and wounding many more. In a second attack that afternoon, a car bomb exploded at a military checkpoint. Fatalities included Brooking military personnel, other civilian road-users, staff and students at a nearby Krandleton Public School and patrons in a tavern next to the checkpoint. In both attacks, vehicles appearing to display branding of medical and food supplies companies were used by the bombers.
15. In the aftermath of these attacks, a group self-named the ‘Rock-Rippers’ claimed responsibility. The group’s leader, going only by the pseudonym ‘the Baron’ (rumoured to be an organised crime figure, Anthony Damicio, who had reportedly done prior business with WorldIn Inc.), released a statement stating that the Rock-Rippers were inspired by the RRM and the leadership of Frank Scorpio, and could not stand by any longer without bringing further forceful resistance to the authoritarian Kurns government.

## National Security Order 24

16. In an emergency meeting during the evening of 8 November 2020, the Brooking National Security Cabinet resolved to make NSO 24, which took effect from 1am the following day. A copy of the relevant portions of NSO 24 is at **Annexure B**.
17. The Special Branch of the BFP, headed by Captain Regina Banner, was tasked with leading the implementation of NSO 24. The Special Branch immediately commenced aggressive enforcement, targeting large segments of the population in Simonia with any type of heritage or ties to the Rockiet Region or Cyprell. Reports from numerous independent sources indicated that these enforcement actions particularly involved the use of strip searches at public government checkpoints, detaining suspects for interrogation by the BFP well beyond the timeframe stipulated in NSO 24, using sleep deprivation as an interrogation technique, and ‘hooding’ certain suspects for hours at a time from the time of their apprehension (whether in public or private).
18. On 20 November 2020, journalist Ken Bruckman tweeted a video of a group of Rockiet citizens being strip-searched by the BFP on the side of a public street in Simonia, before having hoods placed on their heads as they were handcuffed and placed into Police vehicles. Bruckman commented: *“Barbaric! Without knowing what precise danger we are facing, my two cents is that the government has now abandoned all sense and reason”*.

## Escalation of violence

19. The hard-line implementation of NSO 24 proved a tipping point, as it ignited significant reactions from many corners of Brooking’s society. On 21 November 2020, Frank Scorpio released a public video address in which he said:

*The Kurns government is an oppressive, unhinged dictatorship. We don’t believe there are any walls to our resistance movement. My friends, now is the time to unite as one free people of Brooking and use whatever means necessary to reclaim our country.*

20. In the aftermath of this address, approximately one third of the Brooking armed forces (mostly based near the North-East of the state) defected and aligned themselves with the RRM. Brooking state intelligence sources reported that a makeshift command centre involving military and political figures of the RRM – including Scorpio – was established in Cyprell. Those same sources could not confirm whether the Rock-Rippers had brought themselves within the formal umbrella of the RRM. Additionally, large numbers of the Rockiet population – armed and (briefly) trained by the defecting military – took up arms in support of the RRM.
21. In response, on 23 November 2020, President Kurns made an urgent video address to the nation, which included the following excerpt:

*It is with a heavy heart, but with firm resolve, that I must conclude that a battle for our nation is upon us. Those who betray and oppose us are dogs and idiots. Consider them your enemy. It is the patriotic duty of all patriotic citizens of Brooking to follow the lead of those in uniform and defend our country. We must take up this fight in every corner of our nation.*
22. As a result of this dramatic change in circumstances of the resistance, violent clashes commenced between RRM and government forces. These battles centred around the North East of Brooking and, over the first weeks, resulting in significant numbers of casualties on both sides.
23. At the same time, reports emerged of violent beatings being carried out by civilian vigilante groups in Simonia and around the nation against persons thought to be of Rockiet-origin.
24. Following the outbreak of hostilities, between 3 and 7 December 2020, the Brooking National Security Cabinet issued multiple new NSOs that provided for: government seizure of all assets connected to the RRM, and indefinite internment of any persons to which Article 5 of NSO 24 applied.
25. By Christmas 2020, the majority of the RRM had been pushed back by government forces towards the Rockiet Peninsula. The RRM, however, remained steadfast in its defence of the Peninsula, partly because of its ability to maintain supply lines through its ports.

### **The siege of Cyprell – Operation Hellfish**

26. On 5 January 2021, President Kurns issued a televised address to Brooking, in which he stated:

*My government is committed to the rule of law and proper order of the great Republic of Brooking. We will never bow to terrorists. We must defend our people and our country.*

*Brooking has obligations under international law, including sanctioning terrorist organisations and their members such as the so-called Rockiet Resistance Movement. My government has already taken appropriate steps through the implementation of various National Security Orders. But my fellow Brookingians, I regret to advise that we*



*face a great national threat. Our intelligence agencies have recently determined that, aided by three traitorous scientists, the RRM have seized operational control of a nuclear power plant near Cyprell. We are gravely concerned that these radical terrorists will use the plant to develop a nuclear weapon.*

*We must fight back!*

*Accordingly, and consistently with the obligations I have outlined, I have today ordered General Armin Sherman, leader of our loyal military forces, to commence a fresh offensive on the Rockiet Peninsula – Operation Hellfish – to do everything possible to prevent this nightmarish scenario ever coming to pass. Whatever it takes, we must crush them like a paper cup.*

27. General Sherman's conduct of Operation Hellfish included the initiation of siege warfare on the Rockiet Peninsula and the implementation of a full naval blockade (utilising resources from more southerly-located Brooking navy bases).
28. In the early assaults, and as the Brooking military advanced towards the Peninsula, a number of smaller towns fell quickly to General Sherman's forces. Numerous videos soon emerged on social media of the army ostensibly shooting approaching groups of civilian militia raising their arms in the air or waving white cloths, as well as some that appeared to be delivering food and other items to civilians. In response to public and international backlash to these images, the ministries of Defence, State Security, and State Communications and Media issued a joint communiqué, publically stating:

*The RRM and its supporters have used cowardly terrorist tactics before, and we have reason to believe they will do it again. Our armed servicemen and women are too brave and valuable to our nation to be left as sitting ducks to terrorist bombers who abuse the rules of war and disguise themselves as surrendering. We can't take that chance.*

29. Various independent reports soon emerged that Brooking forces were denying entry of all attempted deliveries into Rockiet, including humanitarian food and medical aid. Sources quoted stated that military personnel gave various explanations for the denials of aid convoys, including that support could not be provided to a terrorist organisation, and that they wanted to prevent the possibility of weapons being smuggled into the RRM.
30. On 4 February 2021, the International Committee of the Red Cross issued a statement urging all parties to respect international humanitarian law, especially the protections afforded to civilians in conflict zones.
31. The siege of Cyprell became protracted and food shortages within the city increased severely over the following months. In April, an outbreak of disease saw the deaths of over 15,000 civilian residents. Medical reports indicated that the overwhelming majority of these deaths should have been easily preventable if ordinary levels of medical supplies were available within Cyprell.

## The intervention of Shelbyland

32. In mid-May 2021, the State of Shelbyland (a regional power and long-time strategic opponent of Brooking's government) decided to intervene in the conflict, deploying its powerful navy to the Earlean Sea to break the blockade of Rockiet. After prevailing in relatively short naval battles with Brooking forces, Shelbyland re-established supply-lines to the RRM in Rockiet. This enabled the RRM to re-group and (with assistance of Shelbyland) push Brooking government forces back West, with Frank Scorpio soon declaring that the RRM had seized the East coast.
33. Sensing the advances of RRM forces, President Kurns was reported to flee Brooking into the McAllister range. The former Minister of Foreign Affairs, Wayne Smingers, assumed the role of acting President and, on 12 June 2021, signed a ceasefire with Frank Scorpio and the RRM.
34. After gaining ground in central Brooking, RRM forces came upon a previously secret facility, in which 540 persons were detained. In a video message to RRM supporters, General Underdunk claimed that these detainees were largely malnourished and in generally poor health.
35. In videos disseminated through various social media accounts, all detainees stated that they had been detained, but many did not know precisely by whom. They had been moved to the centre, where they had remained for periods between two and six months. Some detainees gave accounts of having been regularly strip searched, others described being 'hooded' in solitary confinement for over 20 hours per day, and many described being subject to long interrogations during which they were denied food and sleep. After this discovery, and the subsequent widespread media attention it received, a reputable NGO – the Simonia National Union House – stated in a report that at-least 85% of the detainees depicted in the media were identified members of the Rock Rippers.
36. As a result of numerous cyber-attacks carried out by Shelbyland on Brooking government agencies in May/June 2021, large volumes of previously secret government documentation were released into the public domain. Amongst these documents were the following excerpts of transcripts from Brooking National Security Cabinet meetings:

(a) Meeting on 1 December 2020

C. Wingam (Minister of State Security): *Mr President, despite the national unrest, the Brooking National Police have been working tirelessly to at least maintain some order here in the capital. Only a small number of suspected RRM members who Police have apprehended so far have any direct security value, but the existence of this operation is keeping the Rockiet community from causing too much more trouble here in Simonia. But with evolving situations across the country, we should go further.*

W. Smingers (Minister for Foreign Affairs): *I must object. The National Security regime that has been implemented today is a large part of why we are in this situation. It is unconscionably fiendish and should be stopped.*

C.M. Kurns (President): *No, I agree with Minister Wingam that we need to bring the full force and extent of all available legal tools to bear upon our enemies. We will draft and vote on new National Security Orders in the coming days.*

(b) Meeting on 4 January 2021

C. Wingam (Minister of State Security): *I wish to provide an update on the matter of the RRM having taken operational control of the Rockiet nuclear power plant. Our intelligence agencies report that three senior nuclear scientists – Mandy Symonds, Homer Sampson, and Tibor Zutroy – have joined the RRM. We have received information that they are working on a ‘Project Arcturus’, developed by Frank Scorpio and the leader of the RRM armed forces, General Robert Underdunk, which we believe may be a plan to develop a nuclear weapon from the facility. We don’t have any reliable estimates as to the RRM’s immediate capability to carry out Project Arcturus, however our government’s chief nuclear scientist, Professor Stuart Duckworth, has estimated that with the right resources and knowledge, this could be achieved in months, not years.*

C.M. Kurns (President): *Thank you Minister Wingam. It is clear that we need to take decisive action. Minister Edwardson, do you have a proposed response?*

L. Edwardson (Minister of Defence): *Yes, Mr President. It is too risky to conduct direct attacks on the power plant itself, but I propose a complete siege and blockade to cut off the rebels’ ability to sustain resistance from the Cyprell and its surrounds for any length of time. Essentially, we should turn the Rockiet Peninsula into an isolated island.*

C.M. Kurns (President): *Excellent.*

## **Referral to the International Criminal Court**

37. In July 2021, the Prosecutor of the International Criminal Court (**ICC**) announced the commencement of an investigation into suspected war crimes having been committed during the Brooking civil war.
38. Following an application of the Prosecutor, the Pre-Trial Chamber of the ICC issued an arrest warrant for Charles M. Kurns, pursuant to article 58 of the *Rome Statute*.
39. On October 2021, Kurns was located in a small mountain town just over the border in Nallyrand, was promptly arrested and transferred to the ICC in The Hague.
40. At all relevant times, Brooking was a party to the Geneva Conventions of 1949 and their Additional Protocols I, II and III; the Rome Statute of the International Criminal Court; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and; the International Covenant on Civil and Political Rights.

## CHARGES

The Office of the Prosecutor herewith submits the Document Containing the Charges against Charles M. Kurns:

- i. Ordering, soliciting or inducing the commission of outrages upon personal dignity, in particular humiliating and degrading treatment, through the implementation of National Security Order 24 and other National Security Orders (pursuant to articles 8(2)(c)(ii) and 25(3)(b) of the *Rome Statute*); and
- ii. Intentionally directing an attack against a civilian population, being responsible as a military commander, in relation to the siege and blockade of Cyprell (pursuant to articles 8(2)(e)(i) and 28(a) of the *Rome Statute*).

**ANNEXURE A**

**Map of Brooking and surrounds**



## ANNEXURE B

### National Security Order No. 24

Made by the National Security Cabinet of the Republic of Brooking acting pursuant to the *Brooking National Security Act 1991*.

#### Article 1 – Declaration of Terrorist Organisation

- (a) The Rockiet Resistance Movement is deemed to be a terrorist organisation.
- (b) The *Rockiet Resistance Movement* includes any person, persons, or entities (or any combination thereof) that is reasonably believed to:
  - (i) associate with;
  - (ii) do business with;
  - (iii) reside with; or
  - (iv) provide support to

Frank Scorpio, the Rock-Rippers, WorldIn Inc. (including any employees and/or agents thereof), and/or any person who self-identifies as being a member of the Rockiet Resistance Movement.

#### Article 2 – Criminal Offence – Membership of a terrorist organisation

It is an offence to be a member of the Rockiet Resistance Movement. Maximum penalty 25 years' imprisonment.

...

#### Article 5 – Search powers

- (a) Any member/s of the Brooking National Police or Brooking Military may, upon suspecting that a person may be a member of, or sympathise with, the Rockiet Resistance Movement, conduct reasonable security measures to neutralise threats to the peace and good order of Brooking.
- (b) For the purpose of this article, *reasonable security measures*, include:
  - (i) searches of premises;
  - (ii) searches of persons (including 'strip searches');
  - (iii) detaining and questioning persons for up to 96 hours; and
  - (iv) anything incidental to the above, including physically restraining persons.
- (c) For clarity, an officer acting under sub-paragraph (a) of this article does *not* require any specific prior authorisation from another person.

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Ordered at Simonia on 8 November 2020

President: Charles M. Kurns; Minister of Foreign Affairs: Wayne Smingers; Minister of State Security: Clancy Wingam; Minister of Finance: Ruby Joseph; Minister of Defence: Louise Edwardson; Minister for State Communications and Media: Esteban Spielbergo; Minister of Health and Science: Julian Hibbard.