

PROSECUTOR VERSUS GENERAL BUTCHER AND MAJOR GENERAL MARSHALL*

*2008 UP Law International Humanitarian Law Moot Court Team***

I. STATEMENT OF FACTS

A. SUBURBIA AND MEGRISLAND

Suburbia and Megriland are neighbouring countries whose respective populations are divided between two ethnic groups: the Rumons and the Delphons. Megriland's population is composed of eighty-six percent Delphons and nine percent Rumons while Suburbia has eighty-three percent Rumons and eleven percent Delphons.

Suvidesh is a province of Suburbia that shares a common border with Megriland. Owing to its geographical proximity to Megriland, Suvidesh is inhabited by ninety-two percent of Suburbia's Delphon population. Manifest discrimination in terms of economic benefits and governmental representation made the Delphons in Suvidesh yearn for liberation from Suburbia.

In early 2006, a civilian by the name of Mr. Butcher floated the Suvidesh Nationalist Alliance (SNA). The objective of SNA is to liberate Suvidesh from the yoke of Suburbia. Mr. Butcher called himself "General Butcher" and started training Delphon youngsters who joined the SNA in

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military and guerrilla warfare in August 2006. On January 1, 2007, SNA held its first organizational conference.

Inspired by Butcher's fiery speeches during the conference, a number of Delphon youngsters joined the SNA. Butcher styled himself as General Butcher upon the insistence of Delphon youths. He imparted military training to enlisted Delphon youths and taught them military and guerrilla warfare techniques.

But even before the conference, or by September 2006, the Megrisland government was already secretly holding parleys with General Butcher wherein the former encouraged the latter to launch an insurrection against the Suburban government for the liberation of Suvidesh. General Butcher, with the support of 1500 members of SNA, started insurgency operations in October 2006. In many places, their fiery speeches led to tensions and to reports of Rumons being attacked.

Two days after the conference, leaflets were circulated all over Suvidesh. The leaflets maligned Rumons, advised Delphon parents not to allow their children to mingle with Rumon children, and called on the Delphon people to prepare for the final blow against their opponents which was to happen shortly. The leaflets also hailed the leadership of General Butcher. Furthermore, posters with caricatures depicting a group of people with swords and axes chasing a group of women and children were pasted in public places. The leaflets and posters were issued in the name of the 'Suvidesh Nationalist Youth' or '(SNY),' which claimed to be the youth wing of the SNA.

General Butcher told the media that there was no official youth wing in the SNA organisational structure. However, he expressed appreciation for the Delphon people's response to the cause of liberating Suvidesh. When asked about the leaflets and posters, he said "Anger of the Delphon people is being expressed in different forms" and that "Therefore, everybody should understand the spirit behind these activities."

On the night of 7 January 2007 there were reports that Delphon youths carrying weapons while shouting slogans warning Rumons to flee from Suvidesh or face consequences were roaming the localities inhabited by Rumons. The next night, Delphon youths started targeting Rumons with weapons. Many Rumon men fled fearing attacks. The next morning, media reports and interviews of victims alleged that Delphon youths killed as many men as they could catch and physically attacked unarmed women and

children. It was estimated that more than a thousand Rumons died in Suvidesh.

Amidst the violence perpetuated by Delphon youths, the Suburbian government was compelled to launch counter-insurgency operations against the SNA. Five days after, General Butcher sought help from the Megriland government which readily obliged and sent a full battalion of armed forces, under the command of Major General Marshall.

The Gopada, a religious shrine that is entered in the list of Cultural Property under enhanced Protection under the Second Protocol to the 1954 Convention for the Protection of Cultural Property during Armed Conflict, was not spared by the Delphon insurgents.

The open space on the shrine's southern and eastern sides are normally used for social gatherings and political meetings. On the evening of 10 February 2007, local leaders belonging to the political party in power in Suburbia mobilized people at an open space behind a shrine in Lohari. Incidentally, forces led by General Crooks entered the town of Lohari at that time. In the overwhelming presence of General Crooks' forces, the leaders appealed to the people not to get carried away by General Butcher and remain united in the situation of crisis. Owing to the Gopada's geography, the open space on the southern side where General Crook's forces were located may be reached only through the two narrow passages from both sides of the shrine.

Forces led by Major General Marshall fired from the front side of the shrine to target the Suburbian forces. The firing lasted for almost two hours. The next day, extensive media coverage reports stated that more than forty percent of the shrine, mainly on the front side, was destroyed. Major General Marshall issued a statement saying that their main target was Suburbian forces and not the shrine. He imputed fault to General Crooks and his forces for hiding behind the shrine.

During the period of escalated fighting, Marshall's forces also set Suburbian Oil wells on fire. By afternoon, it was reported in the electronic media that a large number of people living in nearby villages were killed in the previous night's shelling. The minister of the Oil Resources of Suburbia issued a statement blaming the Megriland forces for deliberately targeting and shelling on oil wells which caught fire. It was asserted that Major General Marshall was well aware of the location of these oil fields. This fact was not denied by General Marshall.

The conflict in Suburbia was so intense that not even the sending of UN-hatted forces into Suburbia pursuant to an earlier UN Security Council Resolution (Resolution ABC of 1 April 2007) was able to contain the fighting. In view of the escalating conflict in Suburbia, the Council was again convened and at an emergency meeting, Resolution DEF was passed wherein all the parties were called upon to immediately end the hostilities. The parties relented at the resolution.

The Council also ordered the Parties to accept the jurisdiction of the ICC Statute. It notified the two parties that violations of the 1949 Geneva Conventions and the 1977 Additional Protocols, to which both States are parties, would be added to the crimes the Council would investigate. The Parties, the defendants and the ICC have all accepted this enlarged mandate.

II. SUMMARY OF PLEADINGS

A. GENERAL BUTCHER IS CRIMINALLY LIABLE UNDER THE ICC STATUTE. HE IS RESPONSIBLE FOR THE ATTACKS PERPETRATED BY DELPHON YOUTHS AGAINST RUMONS. THESE ATTACKS ARE CRIMES WITHIN THIS COURT'S JURISDICTION.

1. The physical attacks against unarmed Rumon women and children, which were committed in the context of and in association with armed conflict, constitute the war crime of directly attacking civilians. They are liable for violating a customary norm of IHL, that of distinguishing between civilians and enemy combatants at all times.
2. The systematic targeting and killing of Rumons in Suvidesh indicate the intent to destroy an ethnic group, in whole or in part, as such. The series of circumstances lead to the inevitable conclusion that such attack amounts to the crime of Genocide.
3. Upon the principle of command responsibility, even a non-military person such as General Butcher may be criminally liable for attacks committed by individuals over whom he exercises effective control. General Butcher is the recognized leader of the insurrection.

B. MAJOR GENERAL MARSHALL IS CRIMINALLY LIABLE FOR VIOLATIONS OF THE ICC STATUTE, THE FOUR GENEVA CONVENTIONS AND THE FIRST ADDITIONAL PROTOCOL.

1. The existing non-international armed conflict was subsequently internationalized when Megrisland intervened on the side of the insurgent SNA.

2. Major General Marshall failed to fulfill the obligation to respect protected cultural property and to respect the environment during armed conflict. The damage done to the Gopada shrine as a result of the armed attack led by Major General Marshall on 10 February 2007 violated the special protection accorded to the shrine under international law; the shelling of oil wells committed by Megrisland forces caused harm to the environment which is not justified by the anticipated military advantage.

3. As the military commander of the battalion of Megrisland's armed forces sent in Suvidesh, Major General Marshall is criminally liable for failing to respect protected cultural property and the environment during armed conflict under Article 25 of the Statute. In any case, his liability therefor is founded upon the principle of command responsibility.

III. PLEADINGS AND AUTHORITIES

A. GENERAL BUTCHER IS CRIMINALLY LIABLE UNDER THE ICC STATUTE

1. The Acts Committed Amount to Crimes Proscribed By The ICC Statute

The Statute condemns Genocide and War Crimes as *most serious crimes* of concern to the international community as a whole.¹ It is respectfully submitted that said crimes obtain in this case.

¹ Rome Statute of the International Criminal Court, 1998, 2187 U.N.T.S. 90 (hereinafter ICC Statute), art. 5.

**a. The Physical Attack Against Rumon Women and Children
Amounts to the War Crime of Directly Attacking Civilians**

Parties to a conflict must at all times *distinguish* between civilians and enemy combatants.² Under no circumstance may civilians be made the object of a *direct* attack.³ This fundamental rule of IHL was violated by Delphon youths who physically attacked unarmed Rumon women and children not taking any part in the hostilities [Record ("R.") 6].

b. The Attack was Committed During a Non-International Armed Conflict

A non-international armed conflict exists when there is *prolonged conflict* between government authorities and an *organized* armed group.⁴ These two requisites⁵ are present in this case.

i. The Suvidesh Nationalist Alliance ("SNA") was an Organized Group Fighting Against the Government

There is organization when the armed group is *organized to a greater or lesser degree*.⁶ In this case, General Butcher's proclamation as SNA's leader, along with a twelve-member central committee (R.3), proves SNA's organization. SNA has even launched continuing insurgency operations against the Suburban government and held several meetings in different parts of Suvidesh.

² HENCKAERTS AND DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (2005) (hereinafter HENCKAERTS AND DOSWALD-BECK), Rules 1 and 7.

³ Second Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1977, 1125 U.N.T.S. 609 (hereinafter Protocol II), arts.4(1), 13 (2); 1949 Geneva Conventions, art.3.

⁴ *Prosecutor v. Tadić*, Case No. IT-94-1 (1999) (hereinafter *Tadić Appeals 1999*), ¶70; *Prosecutor v. Aleksowski*, Case No. IT-95-14/1-T (1999) (hereinafter *Aleksowski*), ¶43; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135; and Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 (hereinafter 1949 Geneva Conventions), art.3.

⁵ *Prosecutor v. Limaj, Bala and Muslimi*, Case No. IT-03-66-T (2005) (hereinafter *Limaj, et al.*), ¶84.

⁶ *Prosecutor v. Musema*, Case No. ICTR-96-13-A (2000) (hereinafter *Musema*), ¶247-248; Study by the [International Committee of the Red Cross] submitted as a reference document to the Preparatory Commission for the establishment of the elements of crimes for the International Criminal Court (hereinafter ICRC Reference to the Preparatory Commission).

ii. Months of Fighting is "Prolonged" Fighting⁷

The SNA's operations are acts of open hostility committed cumulatively for four months (R.3-5).

c. The Attacks were made In the Context of and Associated With the Armed Conflict ("Nexus")

The attacks were spurred by the fiery speeches made by General Butcher pursuant to SNA's drive to secede from Suburbia. In further training enlisted Delphon youth in military and guerilla warfare, Butcher played a substantial part⁸ in imparting the ability to commit attacks against unarmed Rumon women and children to the Delphon youth.

2. The Targeting of Rumons in Suvidesh by Butcher's Forces Constitutes Genocide

Genocide is a universally condemned crime.⁹ Under the Statute, the *killing* of members of an ethnic group¹⁰ (*actus reus*), when committed *with intent to destroy the group as such*¹¹ (*dolus specialis*), whether in part or in whole, amounts to this crime.¹² The elements constitutive of genocide are all present in this case.

a. Butcher's Followers Killed Rumons

It is respectfully submitted that the killing of Rumons on the night of 8 January 2007 (R.7) satisfies the *actus reus* requirement of genocide. That this information was sourced from *media reports* does not make them

⁷ *Prosecutor v. Lubanga*, Case No. ICC-01/04-10/06-803 (2007). (hereinafter *Lubanga*), ¶¶234-235.

⁸ *Prosecutor v. Kunarac, Kovac, and Vokovic*, Case No. IT-96-23 and IT-96-23/1 (2002). (hereinafter *Kunarac, et al.*), ¶58.

⁹ *The Application of the Convention on Genocide (Bosnia and Herzegovina v. Yugoslavia)*, 95 I.L.R. 1 (1993) (hereinafter *Case Concerning Genocide*), ¶95.

¹⁰ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T (1998) (hereinafter *Akayesu*), ¶ 513; *Prosecutor v. Ntakirutimana and Ntakirutimana*, Case Nos. ICTR-96-10 & ICTR-96-17-T (2003) (hereinafter *Ntakirutimana and Ntakirutimana*), ¶789; *Prosecutor v. Semanza*, Case No. ICTR-97-20 (2003) (hereinafter *Semanza*), ¶ 422.

¹¹ *Prosecutor v. Blagojevic and Jokic*, Case No. IT-02-60-T (2005) (hereinafter *Blagojevic and Jokic*), ¶ 669; *Prosecutor v. Stakic*, Case No. IT-97-24-T (2003) (hereinafter *Stakic*), ¶ 521; *Prosecutor v. Krstic*, Case No. IT-98-33 (2004) (hereinafter *Krstic Trial*), ¶ 561; *Prosecutor v. Jelavic*, Case No. IT-95-10 (1999) (hereinafter *Jelavic Trial*), ¶ 67; *Prosecutor v. Sikirica et al.*, Case No. IT-95-8 (2001) (hereinafter *Sikirica*) ¶89; *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14 (2003) (hereinafter *Niyitegeka*), ¶ 410; *Prosecutor v. Rutaganda*, Case No. ICTR-96-3 (1999) (hereinafter *Rutaganda*), ¶ 60; *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Case No. ICTR-99-52-T (2003) (hereinafter *Nahimana, et al.*), ¶ 948.

¹² ICC Statute, art.6 (a).

inadmissible in evidence.¹³ Relying on media reports is a usual practice of international and municipal tribunals in determining questions of fact.¹⁴

b. The Killing was Committed with Genocidal Intent

Enraged Delphons *targeted* Rumons, killing more than 1,000 men and attacking unarmed women and children (R.7). *Not a single non-Rumon was killed*. It is settled that the *systematic* targeting of a group is a circumstance from which genocidal intent may be inferred.¹⁵

Five days before the attacks, Butcher's followers published posters depicting a group of people with swords and axes chasing another group consisting of women and children. Carrying weapons and shouting slogans, the followers of Butcher threatened Rumons to flee from Suvidesh or "face the consequences." This series of circumstances leads to a single conclusion¹⁶: the killing was perpetrated with genocidal intent.

B. GENERAL BUTCHER IS CRIMINALLY LIABLE UPON THE PRINCIPLE OF COMMAND RESPONSIBILITY

A non-military person *effectively acting* as a military commander is responsible for the acts of his subordinates.¹⁷ Here, Butcher is responsible for an act of omission: his failure to properly supervise and control the conduct of his subordinates who commit crimes.¹⁸

1. Butcher Had Effective Authority and Control over the Youth who Attacked Rumons

Effective control refers to a superior's material ability to prevent or to punish acts¹⁹ committed by his subordinates. In the case of civilian

¹³ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.), 1986 I.C.J. 14 (hereinafter *Nicaragua* case), ¶62-63.

¹⁴ *Case Concerning Genocide*, ¶330.

¹⁵ *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T (1999) (hereinafter *Kayishema and Ruzindana*), ¶¶93,527; *Akayesu*, ¶523-524; *Prosecutor v. Delalic, Mucic, Delic and Landzo*, Case No. IT-96-21 (2001) (hereinafter *Celibici Cases*), ¶195.

¹⁶ *Corfu Channel* (U.K. v. Albania.), 1949 I.C.J. 4 (hereinafter *Corfu Channel* case)

¹⁷ ICC Statute, art.28.

¹⁸ DINSTEIN, T CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT (2004) (HEREINAFTER DINSTEIN), at 238.

¹⁹ *Prosecutor v. Blaskic*, Case No. IT-95-14-A (2004) (hereinafter *Blaskic Appeals*), ¶484; *Prosecutor v. Blaskic*, Case No. IT-95-14 (2000) (hereinafter *Blaskic Trial*), ¶300.

commanders, this requirement is to be *interpreted broadly* as it cannot be expected that civilian superiors will have equivalent disciplinary powers as their military counterparts.²⁰

General Butcher instigated the insurrection and became the proclaimed leader of the entire movement. General Butcher, as instigator and leader, trained Delphon youngsters in military and guerilla warfare techniques and has led successful insurgency operations in Suvidesh (R.3). His denial that SNA did not have any *official* youth wing (R.6) does not negate the fact that he exercised effective authority and control over Delphon youth.

2. Butcher Should Have Known of the Violations Committed by his Subordinates

Media reports of violations of International Humanitarian Law, though incomplete, should have put Butcher on notice²¹ to undertake further investigation.²² He *had reason to know* of the crimes perpetrated by the Delphon youth.

3. Butcher Failed to Prevent and Punish Such Violations

As SNA's commander, General Butcher is duty-bound to *implement a sound oversight system* to prevent violations of IHL and to punish those who violate them.²³ When asked about the leaflets and posters circulated in Suvidesh foreboding harm to Rumons, and Delphon youth targeting Rumons with weapons, Butcher *condoned* the leaflets and posters and the actions by the Delphon youth as expressions of the collective anger of Delphons (R.6) when he should have conducted investigations to punish erring subordinates.

²⁰ *Prosecutor v. Brdjanin*, Case No. IT-99-36-T (2004) (hereinafter *Brdjanin*), ¶281.

²¹ Crowe, *Command Responsibility in the Former Yugoslavia: The Chances for Successful Prosecution*, 29 U.R.L.R. 191 (1994-5) (hereinafter *Crowe*), at 226.

²² Jia, *The Doctrine of Command Responsibility: Current Problems*, 3 Y.I.H.L. 131 (2000) (hereinafter *Jia*), at 159-160.

²³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977, 1125 U.N.T.S. 609. (hereinafter *Protocol I*), arts.86-87; *Prosecutor v. Halilovic*, Case No. IT-01-48-T (2005) (hereinafter *Halilovic*), ¶39.

C. MAJOR GENERAL MARSHALL IS CRIMINALLY LIABLE FOR VIOLATIONS OF THE ICC STATUTE AND OF INTERNATIONAL HUMANITARIAN LAW

1. Marshall's Acts were Committed When the Armed Conflict was Internationalized by Megrisländ's Intervention

A non-international armed conflict is internationalized²⁴ when a foreign State's military *intervenes on the side of the rebels* against the central government.²⁵ In such situation, there is armed opposition between two States which qualifies the conflict as international.²⁶

The conflict was internationalized when Megrisländ sent a full battalion of its armed force led by Major General Marshall to Suvidesh in order to help SNA. This act of *sending regular armed forces* across an international border to carry out acts of armed force against another state²⁷ amounts to a direct intervention.²⁸ Major General Marshall is thus bound to observe the four Geneva Conventions and the First Additional Protocol, which are applicable in international armed conflicts.

2. The Acts Committed Violate the ICC Statute and IHL

a. The Destruction of the Gopada Shrine Violates the Obligation to Respect Cultural Property During Armed Conflict

Recognizing that the preservation of cultural heritage is important to all peoples, and that damage to any cultural property amounts to damage to the cultural heritage of all mankind,²⁹ international law criminalizes acts which result in *damage to, or destruction of*,³⁰ cultural and religious property.³¹

²⁴ Tadić Trial; Dinstein, at 15.

²⁵ *Id.*

²⁶ Stewart, "Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict", I.R.R.C. No. 850, (2003) (hereinafter Stewart), at 313.

²⁷ Definition of Aggression, G.A. Res. 3314 (XXIX), U.N. GAOR, 29th Sess., Supp. No. 31, U.N. Doc. A/9631 (1974). (hereinafter G.A. Res. 3314), art.3(g).

²⁸ G.A. Res. ES-6/2, U.N. GAOR, 6th Emerg. Sp. Sess., Supp. No. 1, U.N. Doc. A/RES/E-6/ (1980) (hereinafter G.A. Res. ES-6/2); G.A. Res. 38/7, U.N. GAOR, 38th Sess., Supp. No. 47, U.N. Doc. A/RES/38/7 (1983) (hereinafter G.A. Res. 38/7).

²⁹ 1954 Hague Convention, Preamble.

³⁰ Prosecutor v. Strugar, Case No. IT-01-42-T, (2005) (hereinafter Strugar), ¶308.

³¹ Prosecutor v. Kordic and Cerkez, Case No. IT-95-14/2 (2001). (hereinafter Kordic and Cerkez), IT-95-14/2, ¶206.

i. The Gopada Shrine is a Protected Cultural Property

The Gopada is included in the list of Cultural Property under Enhanced Protection (R.10). It is thus accorded special protection under IHL.³² This protection may be waived only in cases of military necessity,³³ to wit, when the property, by its function, becomes a military objective and no feasible alternative is available to obtain a similar military advantage.³⁴ There was no military necessity as defined when Major General Marshall destroyed the Gopada.

Use by Suburbia's Armed Forces of Gopada's Grounds Does Not Make it a Legitimate Military Objective

The Gopada did not actually³⁵ make an effective contribution to military action of Major General Marshall and the battalion he led.³⁶ The space behind the shrine was used for a political gathering, and is traditionally used for that purpose. The mere presence of General Crooks' forces during the meeting did not qualify the event as an actual use that would effectively contribute to military action. In any case, objects such as the shrine are presumed not to be used for military contribution.³⁷

Alternative Means of Attack Preclude Military Necessity

(a) The hill on the eastern side or (b) the free passage from the open space through the greenery towards the southern end (R.10) are viable alternatives to effectively attack Suburbian forces situated at the southern side of the Shrine. It was not imperative for Marshall to order the attack from the Shrine's front side. Its destruction cannot thus be credited as mere collateral damage.

³² Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954, 249 U.N.T.S. 215 (hereinafter 1954 Hague Convention) art.2, 4; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1977, 1125 U.N.T.S. 609 (hereinafter Protocol II), 1954 Hague Convention, arts.6, 7, 8; ICC Statute, art.8 (2) (ix); Henckaerts, ¶46.

³³ 1954 Hague Convention art. 4(2), 11(2); Henckaerts and Doswald-Beck, at 127.

³⁴ Protocol II, 1954 Hague Convention art.6 (a).

³⁵ DINSTEN at 90.

³⁶ Protocol I, art.52(2).

³⁷ Protocol I, art.52(3).

b. Setting Fire to Suburbia's Oil Wells Violates the Obligation to Respect the Environment During Armed Conflict at IHL

The environment's importance is universally acknowledged.³⁸ States must therefore take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives.³⁹

i. "Shelled" Oil Wells Harm the Environment

Smoke produced when oil wells are set on fire cause toxic,⁴⁰ heavy atmospheric pollution resulting in trans-boundary harms.⁴¹

ii. The Attack, by not being Proportional to the Anticipated Military Advantage, Violates the ICC Statute

Concrete and direct⁴² military advantage must outweigh the damage to the environment that it is liable to produce.⁴³ Here, shelling the oil wells presented no concrete and direct military advantage because the oil wells were never used for any military gain by Suburbia. It remained a civilian object that should have been immune from attack.⁴⁴ That Marshall knew the precise location of the oil fields – a fact he did not deny – precludes every conclusion except that the shelling was deliberate.

c. Setting Fire to Suburbia's Oil Wells Amounts to a Reprisal Proscribed by the First Additional Protocol to the 1949 Geneva Conventions

Because the environment is an object accorded special protection by IHL,⁴⁵ attacks against it by way of reprisal is prohibited.⁴⁶ Here, the shelling

³⁸ Legality of the Use of Nuclear Weapons, ICJ Rep. 226, 242 (1996) (hereinafter Advisory Opinion on Nuclear Weapons Use), ¶241.

³⁹ *Id.*, at ¶242.

⁴⁰ Austin and Bruch, *The Kosovo Conflict: A Case Study of Unresolved Issues*, in *THE ENVIRONMENTAL CONSEQUENCES OF WAR: LEGAL, ECONOMIC AND SCIENTIFIC PERSPECTIVES* (Bruch and Austin eds., 2000) (hereinafter Austin and Bruch), at 647, 649.

⁴¹ ROBERTS, *Environmental Issues in International Armed Conflict: The Experience of the 1991 Gulf War*, 69 I.L.S. 222. (hereinafter Roberts), at 222, 247; Joyner and J. Kirkhope, at 29-62.

⁴² ICC Statute, art.8(2)(b)(iv).

⁴³ DOSWALD-BECK, at 52.

⁴⁴ Protocol I, art.49(3).

⁴⁵ DINSTEIN, at 184.

⁴⁶ Protocol I art.55(2); HENCKAERTS AND DOSWALD-BECK, at 523.

was not innocent. Marshall's troops knowingly directed their attacks to the precise location of the oil wells. That it was done in retaliation to an unprovoked firing by the Suburbian forces is an untenable defense because compliance with IHL does not depend on reciprocity.⁴⁷

C. GENERAL MARSHALL IS CRIMINALLY LIABLE UNDER THE ICC STATUTE

A military commander has the legal authority and material means to direct the acts of the forces under his command.⁴⁸ General Marshall led the battalion of Megrisland troops sent to Suvidesh (R.9). By ordering the attack of the Gopada and the shelling of the oil wells, both acts of commission,⁴⁹ General Marshall is criminally liable under the ICC Statute.⁵⁰ In any case, he incurs liability upon the principle of command responsibility.⁵¹

IV. PRAYER FOR RELIEF

The Prosecution moves this Honorable Court to rule that: 1. Accused General Butcher is criminally liable under the ICC Statute; and 2. Accused Major General Marshall is criminally liable for the violations of the ICC Statute and of IHL.

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⁴⁷ HENCKAERTS AND DOSWALD-BECK, at 498.

⁴⁸ *Strugar*, ¶433.

⁴⁹ DINSTEIN, at 237-8.

⁵⁰ ICC Statute, art.25; *Blaskic*, ¶700-701; *Attorney General of Israel v. Eichmann*, 36 I.L.R. 277 (hereinafter *Eichmann*), ¶194; *Tadic Trial*, ¶666 and 669.

⁵¹ ICC Statute, art.28(1).