

**SVKM'S NMIMS KIRIT P. MEHTA SCHOOL OF LAW, MUMBAI
INTERNATIONAL MOOT COURT COMPETITION 2022**

5th -7th August, 2022

CASE CONCERNING INTERNATIONAL HUMANITARIAN CRIMES

**CONFLICT PERTAINING TO THE USE OF LETHAL AUTONOMOUS WEAPONS AS A
TOOL AGAINST HUMANITY LEADING TO THE DISPUTE ARISING BETWEEN
RAMEN AND XACUTI IN TERMS OF VIOLATIONS UNDER INTERNATIONAL
HUMANITARIAN LAW AND OTHER TREATIES**

**MOOT PROPOSITION DRAFTED BY-
MR. ANKOOSH MEHTA, PARTNER CYRIL AMARCHAND MANGALDAS**

INTERNATIONAL CRIMINAL COURT

**MR. KEN (APPLICANT)
v.
XACUTI (RESPONDENT)**

2022

STATEMENT OF FACTS

1. Republic of Xacuti (“Xacuti”) is a coastal nation located in the Olympian continent. While Xacuti’s population comprises followers of several religions, majority of its population (70%) follow the Waterlulu religion. Around 10% of Xacuti’s religious minorities follow Mondulu as a religion. Since 2011, when there was a regime change in Xacuti, internal political instability and unrest became the norm in Xacuti. In mid-2017, it became known that Xacuti’s instability has given rise to a rebel group called ‘Red Faction’ which claims to be the champion of Mondulu rights in Xacuti. Eventually, Red Faction acquired control of the second-largest city of Xacuti, Asgard, located in the northern part of Xacuti. Asgard is also economically important for Xacuti as it harbours an all-weather port. Red Faction has established its foothold in Asgard threatening the territorial sovereignty of Xacuti in the region. It is believed that Red Faction has informants and members spread across Xacuti.
2. United Provinces of Ramen (“**Ramen**”) is an industrialized, oil-rich country with an authoritarian regime and majority of its population subscribes to the Waterlulu faith. Ramen has one of the most powerful militaries in the world, partly due to its expertise in manufacture and deployment of weapons based on artificial intelligence. It shares its coastline with Xacuti. Mr. Ken Adams is a reputed political leader in Ramen who is known for his hardline commitment to the interests of the Waterlulu community. He was elected as the prime minister of Ramen in the elections held in September, 2018. Since coming to power, he has actively supported the government of Xacuti in its fight against the Red Faction.
3. Democratic Republic of Zekovo (“**Zekovo**”) is a small kingdom whose economy is propelled by its oil reserves. It shares borders with Xacuti and is generally viewed as a leader of the Mondulu rights on the world stage. The Waterlulu and Mondulu faiths have tremendous ideological differences dating back a thousand years, which has now resulted in political turmoil between Zekovo and Ramen. There is direct competition between the two countries in the crude oil industry.
4. Since the genesis of the Red Faction, Zekovo has provided financial aid and military support including ammunitions, weaponry, personnel and combat training which has intensified the activities of the Red Faction. Alarmed by the increasing influence of Zekovo (and consequently, Mondulu) in Xacuti, Ramen has from time-to-time supplied financial and military aid to the government of Xacuti to combat the Red Faction and their politico- religious agenda. In

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December, 2018, the Xacutian government requested Ramen's active involvement to prevent the expansion of Red Faction into the inner regions of Xacuti. Consequently, Ramen launched an air campaign in Asgard to defeat the Red Faction and restore peace and stability in Xacuti. Many powerful countries supported this campaign by providing required intelligence.

5. The conflict between Ramen and Red Faction (supported by Zekovo) has led to a full-blown proxy war in Xacuti since 2019. Ramen's active involvement has helped Xacuti control further advance of Red Faction towards southern Xacuti. Over the years, Ramen has stepped up its military deployment in Xacuti. However, Red Faction is still a threat to peace and economic operations in the region due to their unpredictable offensive attacks against ships passing through the coast of Asgard. It has also used rocket-propelled grenade launchers purportedly provided by Zekovo from time-to-time against the oil drilling rigs located off the coast of Ramen.
6. Continuous deployment of Ramen's military on the soil of Xacuti has led to some resentment amongst the local population. Ramen's military staff has regularly engaged in extortion from the local communities and displaced the villages inhabited by the Mondulus community. Many juveniles from these villages volunteered to support Red Faction in their operations against Ramen within Xacuti.
7. As Ramen's military involvement in the internal politics of Xacuti prevented Red Faction from acquiring control over other areas in Xacuti, on December 08, 2020, Red Faction launched explosive-laden drones towards Samra, the capital city of Ramen. The attack damaged civilian infrastructure in Samra and resulted in the death of three civilians.
8. As a counterattack, Mr. Ken Adams ordered lethal airstrikes using autonomous drone missiles called "Swishblade 300", which were programmed to hit the Red Faction's headquarters and bases in and around Asgard. On December 15, 2020, 5 missiles were launched by Ramen out of which three hit the targets and destroyed the Red Faction's establishments resulting in death and mutilation. Two of these missiles changed course due to technical difficulties and wreaked havoc in the villages inhabited by civilian population adjacent to Asgard. Overall, 1,200 people were killed including 100 juvenile fighters and 500 civilians.
9. Even prior to the airstrikes by Ramen in Xacuti, several individuals in Xacuti reported symptoms such as cough, fever and muscular pain. Cases which were not diagnosed timely led to pneumonic plague and death of the infected individuals. The first cases of this infection were found in Asgard amongst the fighters of Red Faction. It was rumored that Mr. Ken Adams had covertly sent some

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individuals infected with Yersinia Pestis into the northern territory of Xacuti as a part of his operation to weaken the power of Red Faction. Unfortunately, the microorganism spread to the civilian population in Xacuti, infected around 2,800 civilians and led to 375 deaths.

10. Immediately after the airstrike, Mr. Ken Adams issued a statement as under:

“I deeply regret the loss of civilian lives in our efforts to bring peace and stability in our long-time ally Xacuti. Nonetheless, the death of these civilians was collateral damage in our operation to protect the territorial integrity of Ramen from regular attacks by the Red Faction. The autonomous missiles used by our army were time-tested and the technical glitch which led to their misdirection is unprecedented.”

11. The use of Swishblade 300 and their disastrous consequences on the people of Xacuti led to international outrage. Several non-government organizations started lobbying with Ramen to prosecute Mr. Ken Adams. After a delay of two months, the government of Ramen finally approved prosecution of Mr. Ken Adams, and after 15 days of investigation, a domestic court in Ramen discharged Mr. Ken Adams on the ground that crimes committed by the autonomous missiles cannot be attributed to Mr. Ken Adams. In relation to this judgment, The Ramen Chronicle, a popular newspaper in Ramen reported that ***“The investigating officials were hands-in-glove with the prime minister. Since the beginning, prosecution was rigged to absolve Mr. Adams of the charges against him.”***

12. Eventually, a well-recognized non-government organization, the Human Rights Clinic conducted an independent investigation into the incident and published a report titled “Humanitarian Crisis in Xacuti”. Relevant portion of the aforesaid report is as under: “Ramen’s use of unmanned weapons in Xacuti not only led to indiscriminate killing of civilians but also destroyed critical infrastructure including two primary health care centers and one school in the villages adjacent to Asgard. The very use of Swishblade 300 raises ethical dilemmas as these autonomous drones, by their nature, do not have the capacity to determine a legitimate military objective and thus, their use violates international humanitarian law... Our sources have also revealed that the spread of microbial agents in the areas surrounding Asgard was attributable to an individual named Bashir (also killed in the airstrike) who travelled from Ramen into Xacuti to join the forces of Red Faction on the orders of Mr. Adams.”

13. Basis the media reports and the aforesaid report by the Human Rights Clinic, Office of the Prosecutor in the International Criminal Court (“ICC”) announced the opening of an

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investigation against the war crimes committed by Mr. Ken Adams. On April 13, 2021, the Prosecutor requested the Pre-Trial Chamber of ICC to confirm the charges of war crimes committed by Mr. Ken Adams in an armed conflict not of an international nature and crimes against humanity committed by inter alia under:

- Article 7(1)(a) (Murder)
- Article 7(1)(k) (Other inhumane acts)
- Article 8(2)(c)(i) (Violence to life and person)
- Article 8(2)(e)(i) (Intentionally directing attacks against civilian population)
- Article 8(2)(e)(iv) (Intentionally directing attacks against buildings dedicated to education, hospitals etc.)

The Prosecution was granted liberty by the Pre-trial Chamber to add to and modify the above charges basis further investigation.

14. Apart from written testimonies of some eye-witnesses who had seen the flag of Ramen displayed prominently on the Swishblade 300s, the Office of the Prosecutor also produced a leaked telephone conversation between Mr. Ken Adams and one Mr. Raya Habibi (deployed as a part of Ramen's army in Xacuti) in support of the above charges. Forensic reports have confirmed the identity of voices in the conversation as that of Mr. Ken Adams and Mr. Raya Habibi. The transcript of their conversation can be found at Annexure A.

15. On May 13, 2021, the Pre-trial Chamber issued summons for Mr. Ken Adams to appear before it. Mr. Ken Adams appeared virtually before the Pre-Trial Chamber submitted the territory on which conduct in question took place is beyond the Court's jurisdiction.

- i. death of merely 1575 persons does not satisfy the gravity threshold under the Rome Statute; and
- ii. the evidence produced by the Office of the Prosecutor is not sufficient for confirmation of charges framed against him.

The Pre-Trial Chamber directed the counsels for the prosecution and the defense to file detailed written submissions and decided to address the questions of jurisdiction and admissibility in the hearing for confirmation of charges.

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16. Ramen and Xacuti are parties to various international conventions and treaties as mentioned in Annexure B.

Legal issues before the Pre-Trial Chamber of ICC:

- a) Whether the ICC has jurisdiction to prosecute and hear the case against Mr. Ken Adams.
- b) Whether the case against Mr. Ken Adams is admissible before the ICC under Article 17 of the Rome Statute.
- c) Whether there is sufficient evidence and reasonable grounds to believe that Mr. Ken Adams is criminally responsible for war crimes and crimes against humanity committed in the territory of Xacuti.
- d) Whether use of Swishblade 300 violates international law and Mr. Ken Adams can be held criminally liable for its use.

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ANNEXURE A

Transcript of the leaked conversation between Mr. Ken Adams and Mr. Raya Habibi dated December 14, 2020:

- **Mr. Ken Adams:** It is time to avenge the attacks perpetrated against our people on our soil. We have to exterminate Red Faction from its stronghold.
- **Mr. Raya Habibi:** Do you need any of our soldiers in Xacuti for the mission?
- **Mr. Ken Adams:** We are using autonomous aerial drones for the attack. We are going all out with some of our deadliest missiles.
- **Mr. Raya Habibi:** There are a number of villages around Asgard. Should we evacuate the villagers nearby?
- **Mr. Ken Adams:** We cannot leak the information about the drone strike till it is done. Drones are configured to attack a set geographic location and we can justify any civilian deaths as collateral damage.
- **Mr. Raya Habibi:** Roger that.
- **Mr. Ken Adams:** I am also sending a few persons from Ramen to Xacuti who will set the ground for strikes. Red Factions will never raise its head again.

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**ANNEXURE
B**

Sr. No.	Convention / Treaty / Statute	Republic of Xacuti	United Provinces of Ramen
1.	Rome Statute of the International Criminal Court (1998)	Party	Not a party
2.	Amendment to the Rome Statute of the International Criminal Court on the Weapons which Use Microbial or Other Biological Agents or Toxins (2018)	Party	Not a party
3.	Geneva Conventions of 1949 and their additional protocols	Party	Party
4.	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1972)	Party	Party
5.	Hague Convention (IV) on War on Land and its Annexed Regulations, 1907	Party	Party

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6.	Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (1980)		Party	Party
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