



**4th PRAVIN GANDHI COLLEGE OF LAW
SAARC INTERNATIONAL MOOT COURT
COMPETITION, 2024**



MOOT PROPOSITION

THEME – WAR CRIMES AND HUMANITARIAN CRISIS



4th PGCL SAARC International Moot Court Competition 2024

In the loving memory of Late Dr. L.R Dwivedi

CASE BEFORE THE INTERNATIONAL CRIMINAL COURT, PRE-TRIAL CHAMBER - II

PROSECUTOR V. MR. KHAMZAT DUNKIN OF SERICA

1. The Republic of Xanterra, the Republic of Veridia, the People's Republic of Serica, and the Democratic People's Republic of Ombria are four neighboring countries in the continent of Asia. Avalia is a small democratic country adjoining Veridia and Xanterra. The landscape is gifted with two island nations, viz., Junta Islands and Mridas Islands that dot the Mysticrium Ocean to the west of Veridia and Xanterra.
2. The Republic Xanterra ('Xanterra') and the Republic of Veridia ('Veridia') have democratic governments, while the People's Republic of Serica ('Serica') and the Democratic People's Republic of Ombria ('Ombria') have autocratic governments. The four countries have been entangled in a brutal war for over a year, with each nation pursuing its geopolitical interests with strategic goals.
3. Xanterra was formerly a part of Serica but gained its independence after a long-standing civil war in the year 1950. Serica, however, has never recognized Xanterra's sovereignty and has sought to annex it by claiming that foreign powers have driven a wedge between the Fatherland and Xanterra. Serica has also imposed economic sanctions and trade barriers on Xanterra, causing severe hardship and suffering to its people.
4. Veridia is a landlocked country that relies on Xanterra to access the sea and the international market. Veridia has supported Xanterra's independence and has maintained friendly relations with it. However, Veridia has also faced severe challenges as its supply routes have been strategically blocked by Serica and Ombria, who are allies in the war. This blockade has had a catastrophic impact on Veridia's economy and the well-being of its citizens, leading to heightened tensions and resentment.
5. Ombria is a country that shares a border with Serica and Veridia. Ombria has a history of political instability and human rights violations. Ombria sided with Serica in the war, hoping to gain more territory and influence in the region. Ombria has also provided military

and financial assistance to Serica, as well as to a separatist group in Xanterra that opposes Xanterra's government.

6. The conflict between the four countries escalated, with each nation deploying its troops and weapons along the borders. The war has resulted in thousands of casualties and millions of refugees, as well as widespread destruction and environmental damage. The war has also posed a threat to regional and global peace and security, as the four countries possess nuclear warheads and have shown signs of willingness to use them.
7. As the war raged on in the south-eastern region of Xanterra, Junta and Mridas Island Nations joined Xanterra and Veridia's government in evacuating their citizens from the conflict zone. The situation which had been already fraught with adversity, had further deteriorated owing to the blockade brought in place by Serica and Ombria of the supply lines, which caused a severe food shortage in Xanterra and affected Veridia as well. In light of this, both the countries (Xanterra & Veridia) faced the risk of mass starvation and death due to the man-induced famine and the lack of humanitarian aid.
8. As the situation reached a critical point, the leaders of the four countries recognized the necessity for a temporary ceasefire in order to allow the evacuation of civilians trapped in the war-torn regions. The Prime Ministers of Xanterra and Veridia, and the Presidents of Serica and Ombria, agreed to meet in Geneva, Switzerland, on the persuasion of the other countries and especially the island nations, to negotiate a peace deal.
9. After arduous talks, a fragile agreement was reached: a ceasefire would be observed daily from 07:00 pm to 09:00 pm XST (Xantera Standard Time) [equivalent to the Indian Standard Time] for a fortnight beginning from January 14, 2023. During the ceasefire humanitarian corridors would be established for the safe passage of civilians from the affected areas. The intention was to minimize the impact on non-combatants and provide a short respite from the relentless conflict. The relevant portion of the Cease-Fire Agreement has been extracted as:

*"The Government of Veridia, Xanterra, Serica and Ombria (hereinafter referred to as "the **Governments**"), hereinafter collectively referred to as "the **Parties**",*

Recalling the Declaration of Principles signed on 2 January 2023, in which the Parties expressed their commitment to end the armed conflict and to seek a peaceful and lasting solution to the political, social, and economic problems subsisting within the Parties,



Recognizing the need to cease all hostilities and to create a conducive environment for the continuation of the peace talks and the implementation of the peace agreement, Acknowledging the suffering and the humanitarian needs of the civilian population affected by the conflict, and the importance of respecting and protecting their human rights and dignity, hereby agree on the following:

Clause 1: Objectives and Principles of the Ceasefire

1.1 The Parties agree to a temporary and comprehensive ceasefire, which shall mean the temporary cessation of all forms of armed violence and hostile acts between the Parties, and the creation of a secure and stable environment for humanitarian aid to be delivered and to enhance evacuation missions during the Cease-fire Period as agreed

Clause 2: Modalities for the Regulation, Control, and Management of Forces

- 2.1. The Parties agree that the ceasefire shall enter into force on January 14, 2023 and shall remain in force from 07:00 pm to 09:00 pm XST (Hereinafter referred to as the Cease-Fire Period)*
- 2.2. The Parties agree to separate, disengage, and redeploy their forces, weapons, and ammunition, in accordance with the following modality:*
- 2.3. The Parties agree to regulate, control, and manage their forces, weapons, and ammunition, and the Parties shall ensure that their forces comply with the code of conduct, the rules of engagement, and the international humanitarian law and human rights law, as applicable.*

Clause 3: Code of Conduct

- 3.1 The Parties agree to abide by the following code of conduct, which sets out the permitted and prohibited activities during the ceasefire:*
- The Parties shall refrain from any form of armed violence and hostile acts, as defined in Clause 2 of this Agreement, and shall resolve any disputes or incidents peacefully and through dialogue.*
 - The Parties shall refrain from any actions or statements that may incite or escalate the conflict, or undermine the confidence and trust between the Parties, the peace process, or the civilian population, and shall promote humanitarian aid and peace talks.*



- *The Parties shall refrain from any interference or obstruction with the humanitarian activities, the monitoring and verification activities, or the implementation of the peace agreement, and shall respect and support the mandate.*

10. In light of the agreement and with time as the war gained further momentum despite the temporary cease-fire arrangement, the Maroon Cross Society, an international humanitarian organization, decided to intervene and offer some relief to the suffering civilians. The intention was to minimize the impact on non-combatants and provide a brief respite from the relentless conflict. The Maroon Cross Society set up camps in safe zones, where they distributed food, water, medicine, and other essential supplies to the displaced, wounded, elderly, children and women. They also offered psychological support and education to the children who had been witnessing the horrors of hatred, warfare and intense trauma.

11. Furthermore, on one hand, the international media, led by Artemis, tried to cover the war as far as possible, despite the risks and restrictions imposed by the warring parties. Journalists reported from the frontlines, the major cities where the intensity of the war was only on the rise, and the refugee camps, exposing the human toll and the geopolitical stakes in the conflict. They also analyzed the economic and environmental consequences of the war. Artemis also tried to channelize diplomatic talks between the Countries at war, however, all the efforts turned to be futile and relentless. For these actions, Artemis was globally extolled for its swift, accurate and comprehensive coverage.

12. On the other hand, the Xanterra Liberation Front (**XLF**) had been active in bringing hurdles to the humanitarian aid supplies that were being led by the Maroon Cross Society. They targeted the temporary relief camps especially where both the women and children were being treated and counselled against the horrors of the on-going war. However, it wasn't certain as to what role was the XLF playing in the conflict.

13. Amidst all of this, on a dark starless night shrouded in thick ominous clouds on January 23, 2023, while one of the ceasefires was being observed and humanitarian aid was being delivered to the unfortunate war-torn victims at the city of Valea, people were scavenging the rubbles for their loved ones at one corner of the city and suddenly at around 07:59 pm XST loud rounds of gunfire were heard from a distance towards the Fort Orion Military



base. Upon hearing the rounds of fire, phone calls were made from one end to the other and the firing paused. Later, it was clarified that the camp from where the gunfire was shot had lost track of time.

14. As the night progressed, the Civil Society Organizations along with the Xanterra military were preparing evacuees outside the Fort Liberty Military base. While documents of the evacuees were being verified. A few of them did not have any identity since they had left their place of residence in the blink of an eye just as the ceasefire had begun at 07:00 pm XST. For these evacuees a Special desk was set up, providing them with temporary access to the country of refugee which is Xanterra's northern city of Ryza.
15. In the midst of everything, as the clock was passing 08:15 pm IST, the Commander of Fort Liberty Military base signaled to the authorities at the entrance to expedite the process and send the civilians towards the aircraft while some military cargo was being loaded. Once **Flight S-114 Atlas** was ready to soar the dark clouds with its flickering lights, around 08:40 pm XST it took off from the Fort Liberty Military base.
16. At around 08:55 pm XST the Xanterra Air Traffic Control ordered Flight S-114 Atlas to take a slight deviation en-route their way to the Ryza Military Airfield. While the engines of the aircraft were thrusting air, amidst pin-drop silence inside the aircraft, a missile hit, and Flight S-114 Atlas was shot down at sharp 09:00 pm XST.
17. The incident sent immediate shockwaves around the world with not a single soul surviving the horrific humanitarian tragedy. This raised concerns about the commitment of the involved nations to uphold the dignity of war, agreed humanitarian measures and this led to accusations and counter-accusations.
18. Three days after the horrific, atrocious, and barbarous incident that claimed the lives of 289 innocent souls, the separatist group in Xanterra, the Xanterra Liberation Front (XLF), claimed responsibility for the attack. The XLF issued the following statement post claiming the incident :

"We, the Xanterra Liberation Front (XLF), claim full responsibility for the downing of the Veridian military aircraft (S-114 Atlas) that trespassed into our sovereign airspace on January 23, 2023. This was a necessary and legitimate act of self-defense against the imperialist aggression of Serica and Ombria, who have been violating our territorial integrity and sovereignty for too long. We shall not tolerate any migration into our



homeland while resources are almost scarce for our survival. Further, we strongly condemn the Prime Minister of Xanterra as a puppet of Veridia and a traitor to the Xanterra people, who has sold out our nation's interests and dignity to the foreign powers. We warn Serica, Ombria, and their collaborators that we will not tolerate any further encroachment on our land, sea, or air, and we will continue to target any aircraft or vehicles that attempt to do so. We will fight for our freedom and independence until the end”

19. Amidst the ongoing news and propaganda from both sides, Yae Jazeera the national news agency of Xanterra and Serica Broadcasting Company came up with their independent reports on the gruesome and horrid incident. The excerpts of both the news agencies are given below.

Yae Jazeera’s report on the downing of Flight S-114 Atlas:

“In a shocking and barbaric act of aggression, Xanterra Liberation Front (XLF) has admitted to sponsoring the terrorist attack that brought down Flight S-114 Atlas, killing hundreds of innocent civilians. The attack was carried out by the notorious rebel group responsible for the violent campaign against the legitimate government of Xanterra. Serica has been found to have provided the XLF with weapons, training, and funding, in an attempt to destabilize Xanterra and undermine its sovereignty. The leaders of the rebel group have close ties with the Serican Government. An anonymous correspondent has revealed that the President of the Serican Government, Mr. Khamzat Dunkin, has been spotted together with one of the Top-Commanders’ of XLF. Yae Jazeera condemns this heinous crime and calls for the international community to intervene and hold Serica and the XLF accountable for their atrocities.”

Serica Broadcasting Company’s report on the downing of Flight S-114 Atlas:

“In a tragic and unfortunate incident, Flight S-114 Atlas, a Veridian military aircraft that was flying over Xanterra's airspace, was shot down by the Xanterra Liberation Front (XLF), a freedom-fighting group that has been resisting the oppression and tyranny of the Xanterra government. The Opposition parties in Xanterra have accused the government of joining hands with the XLF and orchestrating the attack, in order to gain sympathy and support from the international community. This is a clear indication of the corrupt and incompetent state of affairs of the Xanterrian government and a betrayal to the



Xanterrian people. Reports highlight that the current governments of Xanterra and Veridia were in dissension over certain issues. Serica Broadcasting Company expresses its condolences and solidarity to the victims and their families, and beseeches the Government to investigate and expose the truth behind this incident.”

20. The situation became more complicated when Xanterra's Prime Minister denounced the XLF as a terrorist organization that had betrayed the Xanterrian people and endangered the peace process in his morning address on January 28, 2023,

“My fellow Xanterrian citizens, today I address you with a heavy heart. As you may have heard, a group of extremists calling themselves the Xanterra Liberation Front (XLF) has claimed responsibility for the cowardly attack on a Veridian military aircraft that was flying over our airspace on January 23, 2023. This heinous act of violence has killed dozens of innocent people, both Serican and Xanterrian, and has jeopardized the fragile peace that we have been working hard to achieve.

Let me be clear: the XLF is not a liberation movement, but a terrorist organization. They have betrayed the Xanterra people and endangered the peace process. They do not represent the majority of Xanterrian community, who want to live in peace, harmony and cooperation with their neighbors. They are a small minority of fanatics who seek to sow chaos and hatred in our land.

I want to reassure you that the government of Xanterra remains committed to the ceasefire agreement and the humanitarian corridors that we have signed with Serica and Ombria. We will not allow the XLF to derail our efforts to end this conflict and bring back prosperity and stability to our region. We will continue to work with our partners and allies to find a peaceful and lasting solution to this crisis.

My fellow Xanterrian citizens, I ask you to stand with me in this hour of need. Do not let the XLF divide us or intimidate us. Do not let them destroy our hopes and dreams for a better future. We are stronger together. We are One Nation, One People, and above all One Xanterrians. Thank you, and May God bless Xanterra.”

21. The international community was outraged by the shooting down of the civilian aircraft and demanded an independent investigation into the incident. The United Nations Security Council (UNSC) passed a resolution to authorize the Prosecutor to investigate and bring those responsible for the incident to justice.



22. However, Serica and Ombria rejected the UNSC resolution and claimed that it was biased and illegitimate. They accused Veridia and Xanterra of staging the attack to gain sympathy and support from the international community. They also alleged that the separatist group in Xanterra was a terrorist organization that had links with Veridia and other foreign powers. They vowed to continue their military operations until they restored their territorial integrity and sovereignty.
23. In response, President of Veridia and President of Xanterra appealed to the International Criminal Court (ICC) to seek legal redress for the gross human rights violations by Serica and Ombria. They argued that the UNSC resolution was valid and binding, and that Serica and Ombria had breached their obligations under the Geneva Conventions, the Convention on International Civil Aviation, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. They also claimed that the separatist group in Xanterra was acting under the influence of Serica and without their consent or knowledge and that they had no knowledge about its actions.
24. Serica and Ombria on the other hand challenged the jurisdiction and admissibility of the ICC and argued that the dispute was a sovereign political matter that should be resolved through diplomatic channels. They also contended that Veridia and Xanterra had violated the principle of non-intervention and the prohibition of the use of force by supporting the separatist group in Xanterra and by allowing the UNSC to intervene in their internal affairs. They further asserted that the downing of the S-114 Atlas aircraft was a legitimate military target, as it was carrying weapons and supplies for the rebels.
25. In light of this, the ICC appointed a Prosecutor to investigate the claims of Xanterra since 289 innocent civilians had lost their lives. Mr. Connor Strickland, amidst the ongoing war, visited the spot where the remains of Flight S-114 Atlas were found scattered. However, due to the chaotic nature of the conflict zone and the failure of the investigating officer to comply with established protocols, crucial evidence in the form of the cockpit voice recorder (CVR) of the aircraft was not collected and sent for investigation. The failure to adhere to standard procedures outlined in international aviation regulations, such as those set forth in Annex 13 of the Chicago Convention, raised significant concerns about the integrity and thoroughness of the investigation process. Despite these challenges, Mr. Strickland managed to gather some evidence from the debris. While the CVR could not provide direct evidence of collusion, subtle hints within the wreckage suggested a



sophisticated level of coordination and planning in the attack. An analysis of background noises and conversations captured by the CVR hinted at the possible involvement of individuals with access to sensitive military information, including high-ranking government officials. This inference raised suspicions of complicity or tacit support from within the government, potentially implicating the President (Accused) or other influential figures in the orchestration of the attack by the XLF.

26. On August 28, 2023 the Pre-Trial Chamber – II based on the Prosecutor’s report that was quite generic in nature issued a summons to Mr. Khamzat Dunkin, President of Serica to appear before it starting from September 18, 2023. The summons has been issued in light of the multiple and gross human rights violations and for framing of the charges. Responding to the summons, Mr. Dunkin addressed a letter to the Pre-Trial Chamber stating the following:

“Honourable Judges of the International Criminal Court, I stand before you today with deep respect and honour for this esteemed institution. I have always cooperated fully with the Prosecutor and his office during the investigation, as I have nothing to hide or fear.

However, I regret to say that the report that has been presented to you is absolutely biased and unfair. It portrays me and my government as autocratic and oppressive, while ignoring the facts and the reality. I want to make it clear to you and to the world that my government is completely transparent and corruption free. We have always acted in the best interests of our people and our nation. We have also made significant progress in various fields, such as economy, education, health, and security and our GDP is among the highest in the developing world.

I respect this Court and its authority, and I will abide by its decisions. I will ensure that I am represented by my Lawyers in this case, and if necessary, I will also appear in person to defend myself and my government. I trust that this Court will uphold the principles of justice, equity, and fairness, and that it will not be influenced by any prejudice or propaganda. I hope that this Court will recognize the truth and clear my name and reputation. Thank you for your attention.”

27. In light of the above, on September 18, 2023, a hearing has been set before the Pre-Trial Chamber-II.



LEGAL ISSUES:

- a) Whether Mr. Khamzat Dunkin can be prosecuted for the offence under Article 8bis of the Rome Statute?
- b) Whether the evidence from the black box hinge on authentication, relevance, and procedural fairness?
- c) Whether the Republic of Serica and Republic of Ombria can be held liable for the violation of the obligations under the Geneva Convention?
- d) Whether the incident of shooting down of Veridian military aircraft (S-114 Atlas) by Xanterra Liberation Front (XLF) and involvement, violates the Cease-Fire agreement between the Government of Veridia, Xanterra, Serica and Ombria?

NOTE:

- Republic of Xanterra, the Republic of Veridia, the People's Republic of Serica, and the Democratic People's Republic of Ombria are parties to the following conventions:
 - The Rome Statute of the International Criminal Court
 - Charter of the United Nations, 1945
 - The Geneva Convention, 1949
 - The Convention on International Civil Aviation, 1944
 - The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971



Annexure - A

