



IBA ICC MOOT COURT

Organised by the Grotius Centre

2023 International Criminal Court Moot Court Competition

Case before the International Criminal Court (ICC): Prosecutor v. Corlis Valeron of The Republic of Regale

Appeal from the Pre-Trial Chamber's Confirmation of Charges

This is a fictional case intended to enable students to familiarize themselves with the law and practice of the ICC. Participating teams will be divided into three roles: (1) Counsel for the Defendant (Corlis Valeron) which brings the appeal, (2) Counsel for the Office of the Prosecutor, and (3) Counsel for the State of Giskar, participating in the proceedings under Article 19(2)(c) of the Rome Statute. In accordance with the rules of the competition, each team shall write a Memorial for each of these roles, setting forth its legal arguments in the context of the interlocutory appeal by The Defendant, challenging the Pre-Trial Chamber's grant of Confirmation of Charges concerning Corlis Valeron. Oral arguments shall follow the order set forth above.

Established Agenda for the Appeal of the Pre-Trial Chamber's Decision

Pursuant to Pre-Trial Chamber VI's decision to grant the Defendant's request for leave to appeal the Confirmation of Charges of 15 September 2022 (reproduced below), the Appeals Chamber seeks submissions of all parties and participants on the following three issues:

- a. Whether the Pre-Trial Chamber erred in holding that the State of Giskar's acceptance of jurisdiction concerning international crimes committed in the region of the Golden Lowlands was valid given that the territory was no longer part of Giskar at the time it lodged its Article 12(3) declaration with the Registrar?
- b. Whether the Pre-Trial Chamber erred in holding that it had subject matter jurisdiction in this case under Article 7(1)(k) of the ICC Statute?
- c. Whether the Pre-Trial Chamber erred in holding that there was sufficient evidence to confirm charges against Corlis Valeron based solely on the 20 April 2022 Report of the International Investigative Commission whose legitimacy has been challenged by the UN Under-Secretary-General for Legal Affairs?

Pre-Trial Chamber VI
2023 ICC Moot Court Competition

Prosecutor v. Corlis Valeron of The Republic of Regale

Pre-Trial Chamber VI of the International Criminal Court (ICC) renders this decision on the application of the Prosecution to confirm the charges pursuant to Article 61 of the ICC Statute against Defendant Corlis Valeron of the Republic of Regale. Valeron is accused of committing crimes against humanity in the territory of the Golden Lowlands, which was part of the territory of the State of Giskar at the time of the acts in question.

The States involved

1. This case involves two States located on the Stormbreak Peninsula: (1) the State of Giskar (population 2 million), a developing State whose economy is based on mineral extraction, logging, fishing, and farming; and (2) the Republic of Regale (population 80 million), an industrialized State whose largest industry is biotechnology research and production. The territory where the alleged international criminal acts occurred, the Golden Lowlands, was a region of Giskar that became independent on 15 January 2021 and entered into a Merger Agreement and became part of Regale on 15 May 2021. **See Appendix 1 – Map of the Stormbreak Peninsula.**

2. Neither State is a party to the Rome Statute for the International Criminal Court (the ICC Statute), but on 10 April 2022, the Registrar of the ICC received a declaration submitted by Giskar accepting the ICC's jurisdiction with respect to alleged crimes committed in its territory, including the Golden Lowlands, since 1 March 2019. The declaration was submitted pursuant to article 12(3) of the ICC Statute, which enables a State not party to the Statute to accept the exercise of jurisdiction of the Court. **See Appendix 2 – Letter from the Foreign Minister of Giskar.**

The Defendant

3. The Defendant is Mr. Corlis Valeron (age 46), a national of Regale, who since 2012 has served as the President/Chief Executive Officer (CEO) of Karaxis Corp., one of the world's most successful bio technology corporations. Owned and controlled by Regale, Karaxis Corp. has made its fortune on the development of pest-resistant seeds/crops. Karaxis has also secretly been developing designer insects that are pesticide resistant but vulnerable to the plant toxins of its engineered seeds/crops. The corporation holds patents on its pest-resistant seeds/crops; prior to May 2021 it had not shared this bio technology with farmers in Giskar.

4. The Defendant is charged with the commission of crimes against humanity in the territory of Giskar in relation to his role in the conception and implementation of "OBA," which stood for "Operation Bug Attack." The operation involved the intentional propagation of pesticide-resistant insects that are vulnerable only to Kraxis Corp.'s pest-resistant seeds/crops, with devastating effects on the population of the Giskar region known as the Golden Lowlands.

Factual Background

5. On 20 April 2022, the UN's International Investigative Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for international Crimes Committed in the State of Giskar (IIM) issued its first report. **The Report of the IIM appears in Appendix 3 and is incorporated in this decision by reference.** The next day, in a joint communication pursuant to Article 14 of the ICC Statute, thirty-eight States Party to the ICC Statute requested the ICC Prosecutor to open an investigation into Crimes Against Humanity committed by Corlis Valeron and other nationals of Regale in the territory of Giskar since March 2019.

6. On 1 May 2022, by a 2-1 decision, the Pre-Trial Chamber granted the Prosecution's request under Article 15(4) of the ICC Statute to initiate an investigation into the involvement of Corlis Valeron in international crimes that occurred in Giskar since 1 March 2019 based on the Prosecutor's submission to the Pre-Trial Chamber of the 20 April 2022 Report of the IIM.

7. According to the IIM's Report, the objectives of OBA, conceived and implemented by Corlis Valeron, were twofold: "first to significantly suppress farm output in the fertile Golden Lowlands of Giskar; and second, to induce the people of the Golden Lowlands to vote to secede from Giskar and join the Republic of Regale which had the technology to protect their farms from the insect scourge." The Report described the method of attack: "Under OBA, Karaxis Corp. personnel would conduct repeated aerial release of bio engineered borers, bollworms, and beetles on the Giskar side of the Cascading River." In describing its impact, the IIM Report stated: "OBA was implemented from March 2019 to September 2020. Based on its own investigation, the IIM's staff has documented that during this period, over 65 percent of the crops grown in the Golden Lowlands were destroyed by insects, while there was virtually no damage to the crops across the Cascading River in Regale. The agro-based economy of the Golden Lowlands region crashed. Domestic food prices quadrupled. 20,000 people in the region died of starvation. 5,000 farmers committed suicide. These widespread casualties were the inevitable and clearly foreseeable consequence of Valeron's operation." Further, the operation achieved its ultimate goal: a plebiscite was held on 15 November 2020 in which the population of the Golden Lowland overwhelmingly voted for secession from Giskar. The region subsequently proclaimed its independence on 15 January 2021, and entered into a Merger Agreement, joining the State of Regale on 15 May 2021.

Procedural History

8. On 10 May 2022, the Republic of Regale informed the ICC Registrar that it had determined that Corlis Valeron had done nothing wrong and that it declined to cooperate in the ICC investigation into the alleged involvement of Valeron in purported international crimes that occurred in Giskar.

9. Since Regale was unwilling to pursue criminal charges against Corlis Valeron, on 20 May 2022 the ICC Prosecutor requested confirmation of the charges against Valeron for committing a form of "ecocide" in Giskar, a crime against humanity with widespread human casualties under Article 7(1)(k) [other inhumane acts] of the ICC Statute. The charged mode of liability is joint commission under Article 25(3)(a) of the ICC Statute.

10. Pursuant to the ICC's summons, on 21 July 2022, Corlis Valeron voluntarily appeared remotely before the ICC from his office in Deepstone City, Regale, and informed the Pre-Trial Chamber that he would be

represented by government counsel. The Pre-Trial Chamber immediately approved Valeron's Defense Counsel, Mason Bannister, Deputy Attorney General of Regale.

11. On 22 July 2022, Defense Counsel filed a motion in opposition to confirmation of charges on the following grounds:

a. Since the Golden Lowlands were part of the territory of Regale rather than of Giskar at the time Giskar filed its acceptance of jurisdiction with the ICC, the Court lacks jurisdiction under Article 12(3) of the ICC Statute over alleged crimes committed in the territory of the Golden Lowlands. Under Article 34 of the Vienna Convention on the Law of Treaties and the precedent of international courts, an international agreement cannot create rights or obligations on a non-party state without its consent.

b. Corporate "ecocide" should not be deemed an "inhumane act of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" under Article 7(1)(k) of the ICC Statute. Such a finding would violate the principle of legality enshrined in Article 22 of the ICC Statute. Further, the alleged facts indicate an attack against crops, not humans, and there is no allegation that the attack was pursuant to any State or organizational policy as required by Article 7(2)(a) of the ICC Statute.

c. Since the legitimacy of the International Investigative Mechanism has been challenged by the UN Under-Secretary-General for Legal Affairs, the ICC Pre-Trial Chamber cannot rely solely on the IIM's report to establish substantial grounds to believe that Corlis Valeron committed the crimes charged, as required by Article 61(7)(a) of the Statute. Specifically, the UN Under-Secretary-General officially opined that the creation of the IIM was an illegitimate *ultra vires* act outside of the authority of the U.N. General Assembly since the IIM was given prosecutive and enforcement powers to create case files, draft indictments, and require State cooperation that only a Security Council-created institution could wield.

Findings and Conclusions of the Pre-Trial Chamber

12. On 30 July 2022, representatives of the ICC Office of the Prosecutor, Counsel for Corlis Valeron, Defense Counsel, and Counsel for Giskar (participating in the proceedings under Article 19(2)(c) of the Rome Statute) submitted briefs and made oral presentations before this Pre-Trial Chamber on the issues raised by the Defense. Corlis Valeron participated in the proceedings remotely. After duly considering their submissions and arguments, the Pre-Trial Chamber hereby makes the following findings and conclusions:

First, pursuant to Giskar's declaration lodged with the ICC on 10 April 2022, the Chamber finds that the ICC has jurisdiction under Article 12(3) of the ICC Statute over alleged crimes committed in the territory of the Golden Lowlands from 1 March 2019, when Valeron's operation was launched until 15 May 2021, when the Golden Lowlands entered into a Merger Agreement with the Republic of Regale and was no longer part of the State of Giskar. That Giskar's declaration of 10 April 2022 postdates the change in sovereignty over the Golden Lowland's does not nullify our conclusion since States may grant the ICC jurisdiction over a situation pre-dating their acceptance of jurisdiction under Article 12(3) of the ICC Statute.

Second, the Chamber recognizes that there have been proposals to amend the ICC Statute to create a stand-alone crime of “ecocide,” but that such proposals have not been adopted. We decline to recognize the crime of ecocide through the back door of Article 7(1)(k) of the Statute. But we do hold that an attack by a State-controlled corporation against a civilian population by intentionally destroying its agricultural lifeblood with knowledge that such destruction will lead to widespread human casualties and suffering, as alleged in this case, constitutes an “inhumane act of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” under Article 7(1)(k) of the ICC Statute.

Third, the Chamber concludes that the Report of the IIM is credible enough on its own to establish substantial grounds to believe that Corlis Valeron committed the crimes charged, as required by Article 61(7)(a) of the Statute. Regardless of the Chamber's views of the U.N. Under-Secretary-General's concerns about the scope of the mandate of the General Assembly-created IIM to create criminal case files and draft indictments and to require State cooperation, the evidence that it has gathered relevant to this case falls squarely within the authority of the General Assembly to establish fact-finding mechanisms and issue reports and recommendations.

For these reasons, the Pre-Trial Chamber hereby:

- Confirms the charges against Corlis Valeron of Regale.
- Orders the Registrar to notify the parties and participants of this decision.

Dissent by Judge Variance:

I found the arguments of the Defense on all three issues persuasive and I therefore dissent from the Decision of the Pre-Trial Chamber.

[Signed] Judge Friendly, Judge Learned, and Judge Variance (dissenting)

**Dated 15 September 2022
At The Hague, The Netherlands**

APPENDIX 1



APPENDIX 2



10 April 2022

Dear Mr. Registrar,

On 9 April 2022, the Parliament of Giskar adopted a Resolution “On the recognition of the jurisdiction of the International Criminal Court by Giskar over international crimes committed by Corlis Valeron and other Regale nationals in the territory of Giskar, including the territory of the Region of the Golden Lowlands, since 1 March 2019.

Mindful of this fact, on behalf of the State of Giskar I have the honor to declare that in conformity with Article 12, paragraph 3, of the Rome Statute of the International Criminal Court, Giskar accepts the jurisdiction of the Court for the purpose of identifying, prosecuting, and judging the perpetrators and accomplices of international criminal acts committed in the territory of Giskar since 1 March 2019.

This declaration is made for an indefinite duration and will enter into force upon its signature. As a consequence, Giskar will cooperate with the Court without delay or exception, in conformity with Chapter IX of the Rome Statute.

I would like to avail myself of this opportunity to express Giskar’s sincere desire to maintain and strengthen the close and productive cooperation with the Court.

Please accept, Mr. Registrar, the assurances of my highest consideration.

Allison Lowtower
Giskar Minister of Foreign Affairs

APPENDIX 3



United Nations General Assembly
Distr.: General
20 April 2022

International Investigative Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for International Crimes Committed in the State of Giskar

Introduction

1. The International Investigative Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for International Crimes Committed in the State of Giskar (IIM) was established by the U.N. General Assembly on 9 April 2022 pursuant to its “Uniting for Peace” (GA Resolution 377(V) of 1950) authority. The 9 April 2022 Resolution (ES-11/2) establishing the IIM gave it the mandate to “collect and analyse evidence of violations of international criminal law, and to prepare case files and draft indictments for prosecution before the International Criminal Court.” The resolution further provides that “all States are to cooperate fully with the International Investigative Mechanism and provide any relevant information in their possession to the Mechanism.” The IIM hereby submits its first report summarizing the evidence in its possession.

Background

2. Since it seceded from the Republic of Regale and was admitted into the U.N. in 2002, the State of Giskar has been composed of four semi-autonomous regions: the Bitterarch Mountains (pop. 500,000), the Dark Woodland (pop. 1 million), the Iron Highlands (pop. 500,000), and the Golden Lowlands (pop. 1 million). Under Article VI of the Giskar Constitution of 2002, the population of any of these regions can secede from Giskar sixty days after attaining a 2/3s majority vote in a plebiscite of the voting-age people of the region.

3. The fertile Golden Lowlands Region is the most economically prosperous region of Giskar, producing nearly five percent of the world’s corn, potatoes and cotton crops. Because of the lower cost of labor in Giskar than in Regale, Regale had been unable to compete in the agricultural export market with its neighbor.

4. Headquartered in, wholly owned and controlled by the Republic of Regale, Karaxis Corp. is one of the world’s leading biotech companies with gross annual revenue of over \$20 billion (US). Karaxis Corp.’s President/CEO is Corlis Valeron. Its Executive VP until recently was Kristen Kole. Karaxis Corp. has made its fortune on the development of pest-resistant seeds/crops. Karaxis Corp. scientists have genetically engineered corn, cotton, and potatoes to produce a patented *Bacillus thuringiensis* (Bt) protein that quickly kills certain insects that digest any parts of the plant, namely European corn borers, bollworms, budworms, and Colorado potato beetles. In addition, Karaxis Corp. has secretly bred genetically

modified insects to be highly vulnerable to its Bt protein but to be resistant to conventional pesticides. The corporation holds patents on its pest-resistant seeds/crops. Until May 2021, it had not shared its biotechnology with farmers in Giskar.

Findings

5. On 2 April 2022, the State of Giskar received information from Kristen Kole, outlining a plan of action known as “OBA” which Kole said stood for “Operation Bug Attack.” The plan was conceived in January 2019 by Corlis Valeron. Kole has subsequently gone missing, but citing its obligation under ES-11/2, Giskar shared all the information Kole provided with the IIM. In the view of the IIM, these materials are authentic documents, including Kole’s detailed notes of conversations with Valeron.

6. According to the information Kole provided, the objectives of OBA were twofold: first to significantly suppress farm output in the fertile Golden Lowlands of Giskar; and second, to induce the people of the Golden Lowlands to vote to secede from Giskar and join the Republic of Regale which had the technology to protect their farms from the insect scourge. Under OBA, Karaxis Corp. personnel would conduct repeated aerial release of bio engineered borers, bollworms, and beetles on the Giskar side of the Cascading River, which constitutes the border between Giskar to the west and Regale to the east, with the border at the midpoint of the river. The insects would spread throughout the Golden Lowlands and devastate the region’s corn, potato, and cotton crops, but they would have no effect on Regale’s crops, which were bio engineered to resist these insects. After the collapse of the Golden Lowlands’s farming industry, Regale would offer to accept a merger of the region with Regale in return for providing the farmers in the region pest-resistant seeds/crops. Valeron required all individuals involved in the operation to sign non-disclosure agreements, keeping all aspects of the operation confidential under penalty of employment termination and substantial fines.

7. According to Kole, OBA was implemented from March 2019 to September 2020. Based on its own investigation, the IIM’s staff has documented that during this period, over 65 percent of the crops grown in the Golden Lowlands were destroyed by insects, while there was virtually no damage to the crops across the Cascading River in Regale. The agro-based economy of the Golden Lowlands region crashed. Domestic food prices quadrupled. 20,000 people in the region died of starvation. 5,000 farmers committed suicide. These widespread casualties were the inevitable and clearly foreseeable consequence of Valeron’s operation. The cash-strapped central government of Giskar was unable to provide support, and the people of the Golden Lowlands grew increasingly disenchanted with Giskar. Meanwhile, an independence movement secretly funded by Regale quickly grew in popularity. The people of the region clamored for independence and the regional government of the Golden Lowlands scheduled a secession plebiscite for 15 November 2020.

8. The secession plebiscite was approved by a vote of 68 percent in favor and 32 percent opposed, a new government was elected, and the region proclaimed its independence on 15 January 2021. On 15 May 2021, the government of the independent Golden Lowland State entered into a Merger Agreement to join Regale. The treaty stipulates *inter alia* that Regale would provide pest-resistant seeds/crops to the farms of the Golden Lowlands and that gross revenue from exports from the Golden Lowland region would be taxed at a 10 percent rate by Regale.

9. On 5 April 2022 the State of Giskar publicly disclosed a summary of the information it had received from Kole and requested that the UN Security Council take action to create an investigative mechanism

to prepare criminal case files and draft indictments for the individuals behind OBA. The Security Council resolution was vetoed by a Permanent Member of the Security Council who was a close ally of the Republic of Regale. On 7 April 2022, Giskar requested a UN General Assembly Resolution under the Uniting for Peace authority to create the investigative mechanism. While the resolution was under debate during an emergency special session of the General Assembly, the UN Under-Secretary-General for Legal Affairs officially opined that “such action by the General Assembly would be *ultra vires* and therefore illegitimate, as only the Security Council has the authority to create an entity with the mandate specified in the resolution, namely to create criminal case files and draft indictments and require State cooperation.” The Resolution (ES-11/2) was nevertheless adopted on 9 April 2022 by a vote of 130 in favor, 50 opposed, and 11 abstaining.

10. On 10 April 2022, Giskar lodged a declaration with the Registrar of the ICC accepting the ICC's jurisdiction with respect to alleged international crimes committed in the territory of Giskar, including the Golden Lowlands, since 1 March 2019.

Conclusions and Recommendations

11. We consider the actions disclosed by Kristen Kole whose effects were documented by our staff to constitute a form of “ecocide,” which, given the number of human casualties, should be considered a crime against humanity, similar in character and scale to other crimes against humanity enumerated in Article 7 of the ICC Statute.

12. Based on the information submitted by Kole and the other information obtained by the IIM, we conclude that there is credible evidence that Corlis Valeron, together with other nationals of Regale, committed crimes against humanity in the Golden Lowlands region which was at that time part of the State of Giskar. Since Giskar has accepted the ICC's jurisdiction, the IIM recommends that States Party to the ICC refer this situation to the International Criminal Court for prosecution. In its next Report, the IIM will provide case files and draft indictments to the ICC to facilitate prosecution of this international crime.