



ASIA-PACIFIC MOOT COURT NATIONAL ROUNDS

2019

MOOT PROBLEM

PROSECUTOR V. COLONEL XANDER RIVIA

BEFORE THE INTERNATIONAL CRIMINAL COURT AT THE HAGUE

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Instructions

- 1. 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." The Accused may "object to the charges" and "challenge the evidence presented by the Prosecutor".
2. 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.
3. 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.
4. Jurisdiction and admissibility: Counsel may, if relevant, address issues of conflict classification or gravity. Any other issues of jurisdiction and admissibility should be ignored.
5. 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 recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
6. Teams are encouraged to look at the case law of international and national courts. If teams rely on decisions of national courts, these should be leading decisions and teams should expect to be asked for copies of the head note and the portion of the transcript or judgment referred to in their argument.
7. Participation to treaties: at all material times, the treaties listed at Annex II were in force for Temeria and Lyria.

Indicative Authorities and Research Material

International Criminal Court

- a) Rome Statute of the International Criminal Court (1998): [http://legal.un.org/icc/statute/english/rome_statute\(e\).pdf](http://legal.un.org/icc/statute/english/rome_statute(e).pdf)
- b) Elements of Crimes under the Rome Statute: <https://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf>

Basic IHL Documents

- a) IHL Treaties: <https://ihl-databases.icrc.org/ihl>
- b) Customary IHL: <https://ihl-databases.icrc.org/customary-ihl/>
- c) ICRC Commentaries to the Geneva Conventions and its Additional Protocols: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>

Cases

- a) International Criminal Tribunal for the Former Yugoslavia: <http://www.icty.org/en/cases/judgement-list>
- b) International Criminal Tribunal for Rwanda cases: <http://unictr.unmict.org/en/cases>
- c) International Criminal Court: <https://www.icc-cpi.int/cases>
- d) International Court of Justice: <https://www.icj-cij.org/en/decisions>

Statement of Agreed Facts

1. Prior to 1981, the territory known as Greater Temeria was administered by the colonial power Redania. Following a century long struggle for independence by the peoples of Greater Temeria, Redania withdrew from the region, partitioning Greater Temeria into two States: the Republic of Temeria and the Republic of Lyria.
2. Temeria has an area of 923,763 km² and a population of around 84 million. The majority of Temerians are ethnically Temeri, the predominant group in the region. Around 11 million Temerians are ethnically Rennish, mainly concentrated in the north of the country near the border with Lyria. Most Rennish follow the Ren religion. Orthodox adherents follow strict dietary restrictions and do not marry outside the faith. Rennish people have historically been subject to persecution in the region.
3. The Republic of Lyria has an area of 475,442 km² and a population of 29 million. Lyria's access to the sea is a narrow land corridor running between the Skellig mountain range on one side and the border with Temeria on the other. Lyria is the only State in the region with a majority Rennish population.
4. The Rennish Liberation Front (RLF) is a movement with proponents across the former Greater Temeria, who were highly active in the struggle for independence prior to 1981. The armed wing of the movement disbanded following independence. Red Geralt, the son of the former leader of the RLF, sits as a member of the Lyrian parliament. Red Geralt's party, the Rennish Freedom Party is a partner in the current ruling coalition.
5. Tensions over the border between Temeria and Lyria have existed since the partition, especially centred around the eastern border. Lyria claims that the original partition agreement signed with Redania assigned the historic city of Velen to the Lyrian side of the border, while Temeria claims the opposite is true. This original agreement was destroyed in an explosion caused by anti-partition demonstrators. The city of Velen has a population of 150,000, 60% of whom identify as Rennish.
6. Since independence, Rennish Temerians have faced discrimination, preventing their employment in the Temerian public service and restricting their access to public education and health care. They are unable to take out bank loans without a Temeri guarantor and are often accused of association with criminal organisations by the mainstream press.
7. On 2 November 2007, a young man drove a truck into a crowd gathered to celebrate Temerian Independence Day in the capital of Novigrad. Armed also with a semi-automatic weapon, the man killed or injured 52 people before he was fatally shot by Temerian Police officer, Captain Elsa Letha. Among the casualties was the Foreign Minister. Footage of the attacker wearing the colours of the RLF (white stars on a blue background) was shown in the global press.

2010 Election

8. In 2010, Elsa Letha was elected President of Temeria on her platform of protectionism and border security. From 2010 to 2011 President Letha's government began dramatically increasing

the cost of visas for foreign workers, a measure which disproportionately affected the two million Lyrians working in Temeria. In 2011, Temeria increased border security and restricted visas for Rennish people. On 3 July 2011, the Letha Government introduced mandatory registration of Rennish people.

9. Hobby drones began anonymously dropping "*Freedom Fighters*" manuals in Rennish communities in Temeria, particularly in the city of Velen. Frequent clashes between demonstrators and police resulted in several live-streamed fatalities. An alleged agent of the Lyrian intelligence service was arrested by Temerian police in November 2011, after he was apprehended driving a truck loaded full of "*Freedom Fighters*" and other publications, as well as a trunk of small arms and ammunition.
10. On 2 January 2012 Temeria began building a wall on the Temerian side of the border with Lyria, in the north-eastern region. Lyria issued a statement declaring the construction to be an act of aggression by Temeria.
11. In the early hours of 27 April 2012, construction of the wall was halted by artillery fire from the direction of Velen, on the Temerian side of the border. The barricade was damaged and 59 people were killed. The casualties were mainly members of the Temerian Armed Forces (TAF) and the Temerian Police Force, who were sleeping in barracks near the construction site. The RLF claimed responsibility for the attack. *Reuters* and the *Temerian Times* reported that the shell casings identified the weapons systems used as the same system used by the armed forces of a number of States in the region, including the Lyrian Defence Force (LDF).
12. Over the course of the next week the RLF clashed with the Temerian police in north-eastern border towns. Casualties from the violence between protesters, the RLF and law enforcement climbed to the hundreds. In the following months, frequent raids on the construction and supplies destined for the wall were carried out by armed men and women bearing blue armbands emblazoned with white stars. On 4 May 2012, the RLF attacked the TAF barracks on the fringe of the city of Velen, surprising the TAF with heavy weapons and forcing the TAF and Temerian Police Force to withdraw from the region. The RLF developed a system of seniority, denoted by the number and arrangement of white stars displayed on a member's armbands. Recruitment of new members was highly successful, particularly in northern towns. By 2 July 2012, an area ranging over 150km from the border with Lyria and incorporating the city of Velen was declared by the RLF to be a "liberated zone".
13. On 30 July, a member of the Temerian cabinet leaked footage of the apprehended Lyrian intelligence agent, in which the man was seen in prison uniform, claiming that Lyrian MP Red Geralt was a member of the leadership of the RLF and was also using the Central Bank of Lyria to fund the RLF. Members of the Rennish Freedom Party made private donations of medical supplies for a field hospital in the "liberated zone".
14. Amongst the weapons captured by the TAF during clashes with the RLF were rifles that were the same model as those issued in the LDF. Serial numbers had been erased on all the seized firearms. Photos of the rifles featured in a series of articles in the *Temerian Times* reporting that the RLF was supplying its operations in Velen from a headquarters based in the Skellig mountains on Lyrian territory. The Lyrian Government strongly denied any link with the RLF and further claimed it was not aware of any RLF operations on its territory.

15. On 2 November 2012, Red Geralt resigned from the Lyrian parliament. On 12 December, he released a YouTube video calling for an end to the Letha Government's tyranny and identifying himself as the new political leader of the RLF.
16. *Al Jazeera* and *Reuters* ran articles with accounts of RLF training camps conducted by the LDF in the Skellig mountains. The *Temerian Times* reported that members of the LDF were embedded as advisers in the RLF. Following a clash bordering the "liberated zone", the TAF identified the mortal remains of one casualty as a former LDF officer. Lyria issued a statement claiming that the man held a valid Temerian visa and that the officer had been de-commissioned from the LDF the previous year.

Siege of Velen

17. By September 2013, the TAF had regained control of nearly half of the "liberated zone", and was now able to conduct operations on the southern periphery of the city of Velen. Velen remained a strong RLF position and the heart of its operations in the "liberated zone". Since the initial clashes in and around the city, the city itself had remained relatively free from violence and a large civilian population remained, composed of both Rennish and non-Rennish Temerians.
18. Velen is an historic city with two rings of fortified inner and outer walls surrounding it. After taking over the city, the RLF reinforced the walls in some places. Then, in response to incursion attempts by the TAF in September 2013, the RLF barricaded most of the gates along the walls, cutting off all but two entrances to the city. The few TAF operations inside the walls led to massive TAF casualties, with building to building fighting in terrain well known to the RLF. High civilian casualties were also reported, caused by the use of explosive weapons in populated areas and the heavy fire around the two remaining entrances to the city.
19. In October 2013, the TAF began successfully intercepting the RLF's supply chain to the city from the north. Any attempted operations within the city continued to produce severe casualties for the TAF and also for the civilians in Velen.
20. On 15 October, the TAF area commander, Colonel Rivia, issued directive 66 to all TAF Units in the Velen area to "take all necessary measures to cut off the RLF's means of fighting" and "remember who we're fighting, the RLF are barbarians, they take no prisoners". On 16 October, the TAF dropped 10,000 leaflets over the city and used phone towers to the south and west of Velen to send text messages to all mobile phones in the area, informing residents of Velen that a 48-hour evacuation period had begun: evacuation would be supervised via the two remaining entries and Rennish inhabitants would be required to present registration papers. The leaflets and text messages also contained a message to the fighters inside Velen "RLF: surrender now or be prepared to fight to the bitter end". Approximately 30,000 residents of Velen evacuated the city before the expiration of the 48-hour period. 2,000 of the evacuees were Rennish.
21. On 19 October, TAF Unit 50 used artillery fire to seal one of the two remaining exits. Several other TAF units patrolled the wall perimeter and were stationed at a distance from the remaining exit to the Eastern Quarter of Velen, enforcing a blanket no-entry or exit policy. After several attempts by RLF members to go over the wall by night, a "shoot on sight" policy was initiated by the TAF for anyone seen on the wall.

22. By November, there were reports of starvation within the city. On 2 December, due to damaged infrastructure from the use of explosives in previous operations, part of the water mains and sewage system between the Southern and Eastern Quarters of the city collapsed. There were reports of cholera outbreaks over the next months.
23. On 25 December, the TAF supervised the evacuation of several thousand civilians from the city. The mortal remains of over 1500 civilians were also evacuated. The evacuation was marred by exchanges of fire between TAF and RLF members as the RLF members were attempting to enter the city dressed as humanitarian workers and carrying relief supplies for their comrades.

Convoy incident

24. By January 2014, international pressure on the government of Temeria to permit the delivery of humanitarian assistance to Velen was mounting. The General Assembly passed a resolution condemning the humanitarian crisis in the city and several States unilaterally imposed arms embargoes and economic sanctions.
25. By this point, the siege had taken a serious toll on the operations of the RLF. The RLF had lost control of a significant portion of Velen and TAF units were now stationed precariously within sections of the city. These TAF Units operated with relative autonomy given communication difficulties and the rapidly changing front line. The RLF retained a stronghold in the large Eastern Quarter, where a large number of civilians also remained trapped without supplies.
26. Images of severely malnourished children in Velen consistently featured in the international media and anti-Letha Government sentiment was gaining traction in Novigrad. Protesters burning blue flags emblazoned with white stars clashed in the capital with "Feed the Children" vigils.
27. On 3 February 2014, President Letha announced that the International Committee of the Red Cross (ICRC) had the agreement of all parties, including the Temerian government, to enter Velen on 5 February to provide the first distribution of food and medical supplies to the Eastern quarter of the city. Red Geralt made a broadcast on his YouTube channel on 4 February 2014 in which he recognised the "fundamental right of the civilians in Velen to independent, impartial and neutral humanitarian assistance" and welcomed the assistance of the ICRC in Velen. Red Geralt expressed his wish to be present to distribute the aid to the besieged civilians personally. The government of Lyria issued a statement in which it declared that it "unreservedly supports the right of all people to humanitarian assistance and considers the obstruction of humanitarian assistance to be contrary to international law."
28. On 4 February, the TAF received intelligence that Red Geralt may have crossed the border from Lyria into Temeria. Colonel Rivia issued an order to all TAF Units in and around Velen to "fire at will" if they had eyes on Red Geralt.
29. At 06.00 on 5 February, a convoy of eight land cruisers passed through the TAF Command Centre directing TAF operations in and around the city of Velen. Carrying primarily food items, water filters and some basic medical supplies, the convoy was driven by ICRC delegates, accompanied by several doctors and nurses from the Temerian Red Cross Society. The delegates confirmed the expected delivery time in Velen was shortly after 07.00. The Red Cross emblem was displayed

prominently on the bonnets and sides of the vehicles and all personnel wore vests displaying the same emblem on their chests and backs.

30. At 06.45, the convoy radioed back to the Command Centre as they entered the city of Velen, informing Colonel Rivia that the convoy was entering the outer fortified wall via the eastern gate as planned. As the convoy penetrated further into the Quarter, radio contact was lost.
31. The convoy passed an RLF checkpoint without incident. Reaching a flooded section of road, the convoy attempted to continue by fording the filthy water. The lead two vehicles became heavily bogged in the water up to the window line. The convoy successfully extracted personnel from the vehicles but were unable to pull the mired land cruisers from the water using tow lines attached to other vehicles. The bonnets of the two towing vehicles were sprayed with thick mud and oil slick in the process. Given the dire situation of the civilians in the Eastern Quarter, the decision was made to attempt delivery via an alternative route. An attempt was made to radio the TAF Command Centre. The TAF signals operator informed Colonel Rivia of the attempted communication from the convoy, reporting the only clear word "water".
32. At 06.50, TAF Unit 52, holding a temporary checkpoint in the Southern Quarter, was successfully ram-raided by a small truck. One unit member suffered minor injuries. Lieutenant Metz of Unit 52 contacted the Command Centre, reporting that armed RLF members were seen in the vehicle as it forced its way through the checkpoint and that Unit 52 was now on high alert for further attacks.
33. TAF Unit 45 was positioned in the absolute perimeter of the Eastern Quarter, at some distance from the nearest RLF-held buildings but with surveillance vision of one of the expected assistance distribution points. At 07.00, and again at 07.30, Unit 45 contacted the TAF Command Centre to report that they had not sighted the convoy.
34. At 07.45, Lieutenant Metz of Unit 52 contacted the Command Centre, reporting the approach of unidentified vehicles in the Southern Quarter of Velen, close to the border of the Eastern Quarter. Communication was patchy.

COL Rivia: "How many vehicles do you see?"
LT Metz: "Six vehicles. Preparing to engage."
COL Rivia: "Do you see a cross on the vehicles?"
LT Metz: "We front vehicles... camouflaged... mud."
COL Rivia: "Can you confirm it is the RLF?"
LT Metz: ".... red red RLF. Preparing to fire."
35. Unit 52 fired on the convoy, wounding eight humanitarian personnel. The wounded were taken to a field hospital and later transferred to hospital in Novigrad to recover. One doctor required amputation of a leg as a result of his injuries. All further assistance to Velen was delayed and the international community strongly condemned the incident.
36. On 23 February 2014, Colonel Rivia withdrew Unit 52 from Velen as a disciplinary measure and posted it to the north-western border region, outside the former "liberated zone".

End of hostilities

37. On 1 March 2014, a cease fire agreement was signed between President Letha and Red Geralt on behalf of the RLF. Humanitarian assistance was finally able to reach the civilian population in Velen.

38. Large protests and sporadic violence continued, mainly in the former “liberated zone”, reaching a low with the 2016 peace negotiations. As a key component of these peace negotiations, Colonel Rivia was delivered into the custody of the International Criminal Court on 15 July 2016.

Charges

Colonel Xander Rivia is charged with:

Count 1

With respect to the cutting off of supplies to the population of the city of Velen, on the basis of individual criminal responsibility for ordering the commission of (Article 25(3)(b) of the Rome Statute):

- The war crime of intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated under **Article 8(2)(b)(iv)** of the Rome Statute;

Count 2

With respect to the 5 February 2014 attack by Unit 52 on the ICRC convoy, on the basis of command responsibility (Article 28(a) of the Rome Statute):

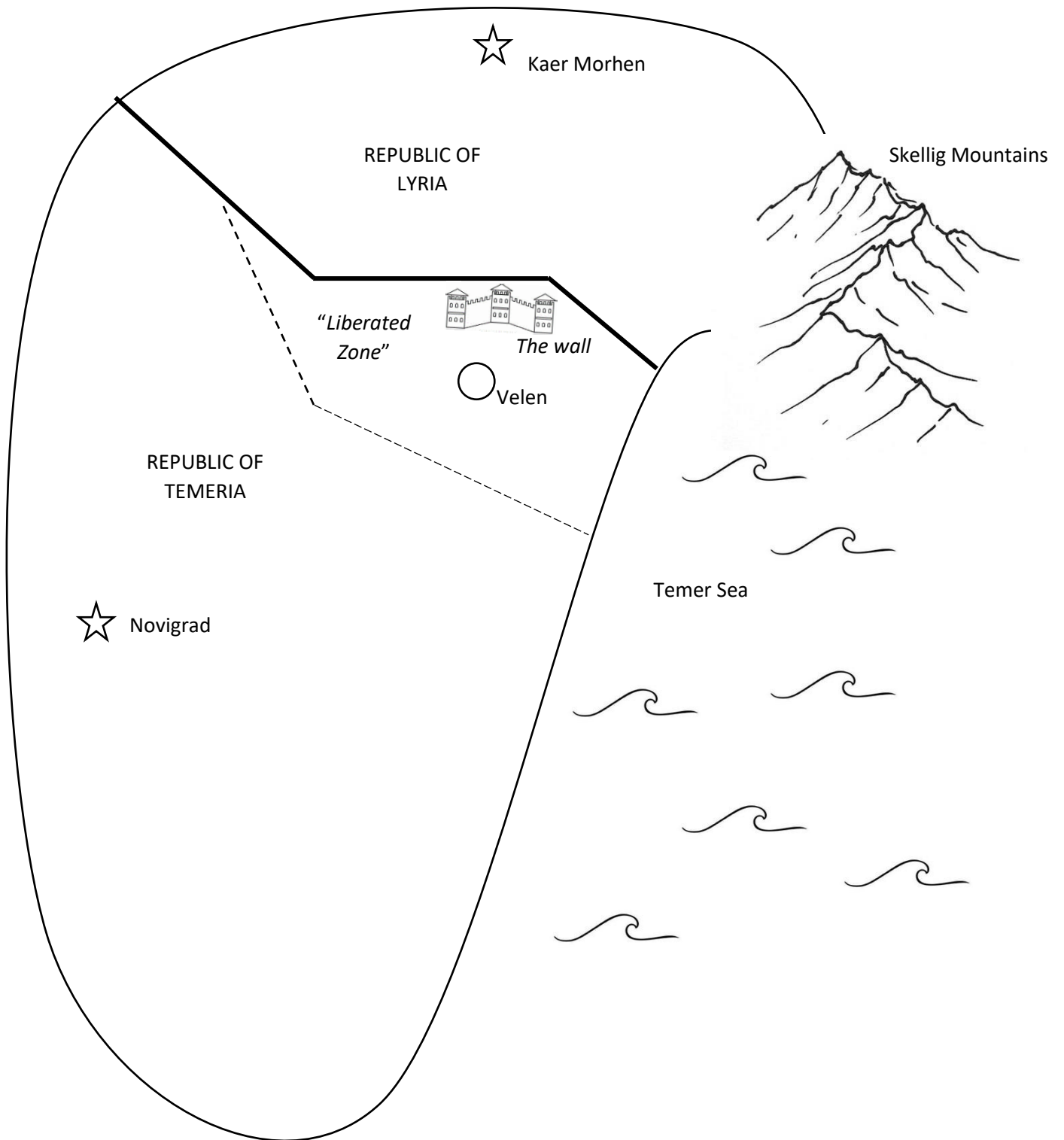
- The war crime of intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict under **Article 8(2)(b)(iii)** of the Rome Statute;

Count 3

With respect to directive 66 issued on 15 October 2013, on the basis of individual criminal responsibility for commission of (Article 25(3)(a) of the Rome Statute):

- The war crime of declaring that no quarter will be given under **Article 8(2)(b)(xii)** of the Rome Statute.

Annex I: Map of Temeria and Lyria



Annex II: List of Treaties

State Party Treaty	Republic of Temeria	Republic of Lyria
Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field, 1949	✓	✓
Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea, 1949	✓	✓
Geneva Convention (III) on Prisoners of War, 1949	✓	✓
Geneva Convention (IV) on Civilians, 1949	✓	✓
Additional Protocol (I) to the Geneva Conventions, 1977	✓	✓
Additional Protocol (II) to the Geneva Conventions, 1977	✓	✗
Additional Protocol (III) to the Geneva Conventions, 2005	✗	✓
Statute of the International Criminal Court, 1998	✓	✓
Amendment to the Rome Statute of the International Criminal Court on the Crime of Aggression, articles 8bis, 15bis and 15ter, 11 June 2010	✓	✗
Convention Prohibiting Certain Conventional Weapons, Protocol II, 1980	✓	✓
Montreux Document on Private Military and Security Companies, 2011	✓	✗