



24TH - 27TH JANUARY 2023

**STRATHMORE INTERNATIONAL  
CRIMINAL LAW MOOT  
COMPETITION**

# HYPOTHETICAL QUESTION



**Strathmore University**  
Law School

## Background

1. The Republic of Atlantis, the Republic of Angria and the United Federal Republic of Ambrosia are parties to the Rome Statute of the International Criminal Court (Rome Statute). The three States also ratified the Kampala amendments on the crime of aggression in December 2018. Additionally, the three States are members of the United Nations (UN) and parties to the International Covenant on Civil and Political Rights (ICCPR), the Vienna Convention on the Law of Treaties, Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations and the Geneva Conventions of 1949 and the Additional Protocols thereto.
2. Atlantis is considered a developed country with a Gross Domestic Product of approximately USD 1.5 trillion. It is a global exporter of oil and gas. Angria on the other hand is considered a lower middle-income country with a Gross Domestic Product of approximately USD 157 billion. It is a global exporter of grain, especially to Ambrosia. Atlantis and Angria were part of Avalon before its disintegration into multiple independent States in the 1970s. Ambrosia is considered a superpower and arguably has the largest economy and mightiest military strength in the world.

## Averna and Archenland

3. On 20th January 2021, Angria made a declaration of its intention to join the regional military alliance YATO. Atlantis is not a member of YATO and has always been opposed to an expansion of YATO's reach and operations into the neighborhood. Consequently, Atlantis quickly recognized Averna and Archenland as independent States. Averna and Archenland are territories within Angria that have previously but unsuccessfully attempted to secede. Mr. Pate Mendozo, the President of Atlantis also negotiated and concluded multiple military assistance bilateral treaties with the two territories.
4. Days after signing of the multiple treaties with Averna and Archenland, President Mendozo appeared on national television in military regalia and promised to do anything to protect the sovereignty and territorial integrity of the two new States. The president of Angria rubbished Atlantis's recognition of the two territories and the subsequent conclusion of the military assistance treaties as an affront to International Law. He deployed the Angrian army to quell uprisings that had erupted in Averna and Archenland after the signing of the military assistance treaties. He also called upon YATO and the international community to offer help in countering Atlantis's illegal acts.

5. President Mendoza retaliated by sending Atlantis troops into Averna and Archenland to help neutralize the threat posed by YATO. The Atlantis's troops entered Averna and Archenland on 24th March 2021. Given the support from locals, the Atlantis troops positioned themselves strategically in locations that offered military advantage over YATO troops and the Angrian military. Even as the fighting continued, international media outlets reported that over one thousand (1,000) people, including women and children, had died by 12th April 2021. International press outlets and civil societies blamed Atlantis troops for using biological and chemical weapons to gain unnecessary advantage. However, it remained unclear whether it was Atlantis troops or the local fighters that used biological and chemical weapons on combatants and civilians alike. Further, President Mendoza was blamed for threatening to use nuclear weapons against YATO and the Angrian military if the fighting escalated.

### **Dr. Camil Varlas's Involvement**

6. Averna and Archenland neighbor Ambrosia and have always been a source of affordable grain which is processed and sold to global markets at triple the buying price. As a result of the fighting, grain exports to Ambrosia from Averna and Archenland dropped by sixty percent (60%). This is because local farmers in Averna and Archenland started to view Ambrosia as an enemy and preferred to sell their grain to Atlantis and other neighboring countries. On 12th May 2021, the Ambrosian Agricultural Agency, the governmental agency in charge of agricultural imports, warned that if the fighting in Averna and Archenland continued, Ambrosia's exports in processed grain would result in monthly losses of about USD 1 million.

7. The Ambrosian president Mr. George Cortez approached Dr. Camil Varlas, a distinguished and highly published International Criminal Law (ICL) expert for legal advice. He specifically requested a legal opinion on whether he would be criminally culpable under ICL for offering military assistance to Averna and Archenland. He made it clear that he needed a convincing legal opinion to persuade the Ambrosian Parliament to approve a military intervention.

8. Dr. Camil issued a legal opinion indicating that President Cortez could only intervene with a UN Security Council (UNSC) authorization. Being a permanent member of the UNSC, President Cortez requested three subsequent emergency meetings of the UNSC on diverse dates to address the situation in Averna and Archenland. Unfortunately, a veto by Atlantis, one of its permanent members, paralyzed the UNSC. The UNSC did not adopt any meaningful resolution except warning Atlantis of dire economic sanctions if it continued activity in Averna and Archenland.

9. Dissatisfied with the inaction by the UNSC, President Cortez requested for a more refined legal opinion from Dr. Camil. To provide an incentive, President Cortez offered to influence a purchase of Dr. Camil's latest ICL book by all law schools in the country resulting in sales of approximately USD 10,000. This conversation is evidenced in Exhibit 1, email from President Cortez to Dr. Camil.

10. Dr. Camil refined her legal opinion and indicated that Ambrosia's military intervention was justified under the international law principle of humanitarian intervention. She urged that the military intervention had to be tailored against the biological and chemical weapons storage facilities in Averno and Archenland. This legal opinion is reproduced in Exhibit 2. It was only on the basis of her legal opinion that President Cortez secured Parliamentary approval for military intervention in Averno and Archenland.

## **Ambrosia's Military Intervention in Averno and Archenland**

11. On 28th May 2021, President Cortez ordered airstrikes on locations believed to be biological and chemical storage facilities in Averno and Archenland. The airstrikes were conducted at 1300hrs, which was prayer time in Averno and Archenland, in a bid to minimize casualties. Unfortunately, the intelligence gathered by the Ambrosian Intelligence Service proved erroneous as the airstrikes ended up hitting a mosque, an Angrian military base and a school. In the aftermath of the airstrikes, over five thousand (5,000) people lost their lives. Over one hundred thousand (100,000) people fled Averno and Archenland into neighboring areas after the airstrikes.

12. The UNSC met in an emergency session to debate Ambrosia's airstrikes. Two members of the UNSC, including Ambrosia, supported the action by Ambrosia. However, the rest of the UNSC members opined that Ambrosia's actions constituted a clear act of aggression and that the situation should be referred to the ICC for investigations and prosecution of perpetrators. In retort, President Cortez was quoted saying, "the ICC can do all the investigations it needs but it will never prosecute any of our nationals." Given a veto by Ambrosia, the situation at Averno and Archenland was never referred to the ICC for investigation and prosecution.

## **Investigations by Office of the Prosecutor**

13. On 7th June 2021, the Office of the Prosecutor (OTP) submitted a request to the Pre-Trial Chamber (PTC) to initiate investigations into the Averno and Archenland. On 15th June 2021, the PTC authorized the commencement of the investigation.

14. The OTP concluded its investigations on 7th December 2021 and decided to charge Dr. Camil under Article 25(3bis) of the Rome Statute for aiding and abetting the crime of aggression. Having failed to present herself to the ICC, an international arrest warrant was issued against Dr. Camil on 10th December 2021.

## **Ambrosia's Military Intervention in Averna and Archenland**

15. In the immediate aftermath of the airstrikes, Dr. Camil was appointed as Ambrosia's ambassador to the Republic of Buranda, which neighbors Atlantis. As the OTP undertook its investigation, Dr. Camil had decided to take a vacation in Atlantis. She stayed at a presidential suite in Best Care Luxury Resort and Spa. Investigations revealed that she had long official calls with President Cortez and other high-ranking officials of the Ambrosian government.

16. On 11th December 2021, a day after issuance of the international arrest warrant, Atlantis authorities arrested and detained Dr. Camil as she attempted to flee the country into Buranda. Reputable international media outlets have aired multiple stories of Buranda's role in providing a safe haven for wanted fugitives.

17. The Atlantis authorities searched Dr. Camil's personal bags and the diplomatic bag. They confiscated an official work laptop from the diplomatic bag. An Atlantis cyber expert bypassed Dr. Camil's password and accessed Exhibit 1 and Exhibit 2 from her work email address. Dr. Camil complained that the Atlantis authorities had also accessed her personal and family information. After being in possession of Dr. Camil's laptop for three (3) days, Atlantis authorities converted the Exhibits from soft into hard copies in the presence of an OTP representative and has since transmitted the said Exhibits to the ICC as evidence. Atlantis authorities handed Dr. Camil over to the ICC on 12th December 2021, a day after her arrest.

18. On 15th December 2021, there was a terror attack on Ambrosia that claimed the lives of one hundred (100) people. President Cortez blamed Atlantis for the terror attack saying that it was as a result of Atlantis's access of the diplomatic bag in Dr. Camil's custody.

## **Agenda for the PTC**

19. The PTC now seeks submissions from the OTP, the Defence and Ambrosia's government counsel participating in the proceedings under Rule 103 of the ICC Rules of Procedure and Evidence on the following issues:

- a. Whether Exhibit 1 and Exhibit 2 should be excluded from evidence.
- b. Whether the actions of President Cortez meets the threshold required for the prosecution of the crime of Aggression under Article 8bis of the Rome Statute.

c. Whether charges against Dr. Camil for aiding and abetting the crime of aggression should be confirmed.

## Exhibit 1

**Date and time:** 25<sup>th</sup> May 2021 at 1400hrs

**From:** cortez@ambrosia.org

**To:** camil@ambrosialaw.co.ke

**Subject:** Ambrosia's Military Intervention in Averno and Archenland

Dear Dr. Camil,

Good afternoon,

Further to our earlier conversation, I write to request a second legal opinion on the above subject.

As you already know, the UNSC avenue has failed drastically. I am under immense pressure to intervene militarily in the Averno and Archenland situation. As such, I request a more specific, concise and refined legal opinion that will convince parliament to approve the military intervention.

If I get the parliamentary approval, I will influence all law schools in the country to purchase one hundred copies of your recent ICL book resulting in sales of approximately USD 10,000. This in addition to the dollars we are paying you for the legal opinion should be sufficient incentive to be helpful in this noble course.

Best regards,

George Cortez

President and Commander-in-Chief of the Armed Forces in Ambrosia

## Exhibit 2

**Date:** 27<sup>th</sup> May 2021

**Subject:** Legal Opinion on Ambrosia's Military Intervention in Averna and Archenland

Mr. President,

1. I refer to my earlier legal opinion wherein I advised you to pursue a UNSC authorization to intervene in Averna and Archenland situation. However, since that avenue has failed, I am now convinced that a unilateral humanitarian intervention would be justified under international law and would not attract any criminal culpability on your part.

2. I have interrogated previous and recent instances of unilateral humanitarian intervention: The April 2017 airstrike by the United States of America (US) against Syria's airfield and the April 2018 airstrikes by the US, the United Kingdom and France against Syria's chemical weapons facilities.

3. In the circumstances, you may proceed and intervene militarily. However, please tailor your attacks against the biological and chemical weapons storage facilities in Averna and Archenland.

Yours faithfully,  
Dr. Camil Varlas.



