



# Hypothetical Case

## International Criminal Court

Situation Relating to the Crime of Aggression vis-a-vis proxy wars, and attributability of crimes committed during UN peace enforcement missions.



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CHANGE TODAY, SHAPE TOMORROW

Point of No Return?

Altering the Course Towards a Future That Lasts

Hypothetical Case: ICC



# I. Factual Background

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## Crime of aggression vis-a-vis proxy wars

1. This case involves the territory and nationals of two States, Dieziland and Pemistonina, which are a part of the Pantagonian continent. Both countries are about the same size; approx. 200,000 square km. Pemistonina has a population of around 5 million and has a developed economy with a \$100 billion GDP. It also has the biggest jewellery-making industry on the continent, which is the backbone fundamental for of its economy. Dieziland has a population of around 2 million. It's developing economy is largely based on the extraction and export of cobalt, with a \$20 billion GDP.
2. While the Diezil government is functional, large areas of Dieziland remain disturbed and politically unstable due to rebel groups that wish to overthrow the current Diezi government. Even though the two countries share a long and somewhat porous border, the political disturbances in Dieziland have not yet reached Pemistonina, which has a bustling tourism industry famous for the nations beautiful beaches and hilly regions.
3. Both countries are democracies and have court systems that generally comply with international standards of a due process. They are both member states of the United Nations, the Pantagonian Union, and parties to the Rome Statute of the International Criminal Court (ratification deposited in 2003).
4. Being neighbouring countries, it was common for Pemistonian citizens to live and work in Dieziland, and vice versa. In September 2017, two Pemistonian citizens working as geologists in Dieziland, found rare diamond deposits in the local mines of Dieziland, namely within the territory of the Bulla Peninsula, located in southern Dieziland. They delivered this information exclusively to the Government of Pemistonina.
5. A year later, in September 2018, non-governmental organisations published reports claiming that large tracts of rebel-occupied territory in Dieziland are seeing an influx of private military contractors. A few days later, news agencies report that the rebels, in cooperation with a large group of unidentified, uniformed, and armed men, have seized some of the largest mines in the Bulla Peninsula. Locals claimed that these people were highly disciplined and coordinated, and believed them to be mercenaries hired by a drug cartel or a rebel group. Other locals also hinted at the possibility that they may be receiving foreign funding, and could have travelled to Dieziland through the porous border between Dieziland and Pemistonina.
6. These mines were owned by DP-Corporation (hereinafter DPC). This company is mutually owned by the governments of Dieziland and Pemistonina and exists in a legal form of a

joint venture company. The Company owned mining assets in several jurisdictions, the most important of which were in Dieziland. Pemistonia and Dieziland are equal shareholders of mining assets in Bulla Peninsula. DPC's headquarters are located within Pemistonia, while three subsidiaries operate in Dieziland. The administrative functions of DPC (e.g. accounting, marketing and similar functions) are handled by its office in Pemistonia. However, all these functions are reported to international cooperation manager Mr Saurabh Shrake in the subsidiary offices in Dieziland. Decisions regarding the Company's mining activities, including decisions about where and how to explore mines and mineral deposits, were made by Mr Shrake and his team of exploration geologists in Pemistonia. These mines were responsible for 80% of the extraction from the Bulla Peninsula. Thus, due to the seizure by rebels and mercenaries, most of the extraction work was suspended, and Dieziland's control over resource extraction over large parts of the Bulla peninsula was lost.

7. The Government of Dieziland termed these activities as acts of terrorism and undertook military measures to protect its territorial integrity. The crisis soon escalated, with dozens having been taken hostage inside the mine or having become victims of violent security incidents outside. The international community was critical of Dieziland's lack of preparedness and preventions and expressed concern for the protection of civilians in the country.
8. In a stealth mission conducted on 2 November 2018, the military forces of Dieziland succeeded in rescuing five miners from the DPC mines. They revealed that some of the armed people were previous workers of the mining company- John Smith, Daniel Miller, and Rick Davidson. The latter was captured by the military forces of Dieziland during hostilities and later agreed to cooperate with the government of Dieziland after a plea bargain.
9. During the investigation it became known that Rick Davidson is a former military soldier and in 2017 was hired, trained and financed by the government of Pemistonia. Mr. Davidson revealed that he, together with John Smith and Daniel Miller were soldiers in the Weis Private Military Company, which was hired by the Government of Pemistonia to seize DPC. Their first step was to become miners at DPC, with the objective of learning everything about the lay of the land, and consequent planning the seizure. According to Davidson's statements, Weis Private Military Company's staff enumerate nearly 10,000 people. Half of these employees were involved in the DPC mine seizure.
10. He also argued that the main purpose of this operation was taking control over natural resources within Dieziland, as Pemistonian scientists had found vast, unexplored diamond deposits in the Bulla Peninsula. The Pemistonian government was concerned that it will lose its monopoly over the jewellery-making industry, which could have disastrous results for the Pemistonian economy.
11. The situation within the DPC has adversely affected trade between Dieziland and other

countries; however Pemistonia's jewellery industry, including the manufacture and sale of diamond products remained unaffected. On 1 January 2019, the Pemistonia elected its new Prime Minister, Dr. Ariel Montera. The very next day, Dr. Montera made a television plea for a quick resolution to the DPC mine stand-off, and consequent stabilisation of trade relations. She also completely denied any Pemistonian involvement in the same. The Prime Minister also added that no person by the name of Rick Davidson exists in the Pemistonian residents' registration records. She also claimed that these three men had impersonated themselves as mine workers, and later helped seize the mine, and thus their statements cannot be trusted.

12. Since 2018, the situation in Dieziland has worsened. Many reputed non-governmental organisations and news agencies, including the International Rights Watch, have published reports about the private military contractors extending support to Diezi rebel groups, that are also involved in transnational human trafficking between Pemistonia and Dieziland. One such culprit is Eduardo del Junko, a drug lord operating from Dieziland who has succeeded in trafficking hundreds of girls from Pemistonia to all parts of the world.

### Attributability of crimes committed during UN peace enforcement missions

In January 2019, following a massacre of civilians in Dieziland, the United Nations Security Council passed Resolution

2/2019, authorising the 'Pantagonian Union and other Member States that have notified the Secretary-General to take all necessary means to protect civilians under attack or threat of attack in Dieziland.'

13. The Pantagonian Union established and deployed the Pantagonian Mission for Dieziland (PMD) with a total of five participating states. Pemistonia was one of the participating states. Each participating state contributed soldiers and resources. The Government of Dieziland promised to cooperate with PMD. As part of the PMD, the Pemistonian government, while interested in restoring peace and protecting civilians in Dieziland, also saw it as an opportunity to deal with the cross-border human trafficking from within Dieziland.
14. Pemistonia consequently deployed General Andres Niviera and his brigade as a part of the soldiers that joined PMD. General Niviera was appointed as third-in-command of the PMD forces. While fighting the war and protecting civilians in Dieziland, Niviera and his crew were to simultaneously carry out covert anti-trafficking operations.
15. Three weeks after deployment in Dieziland, there was a tip-off that Eduardo del Junko was going to transport a huge quantity of drugs and smuggle around fifty girls from Pemistonia to Dieziland, and from Dieziland to several onward destinations. A high alert was put out and through the help of Dieziland's special forces, Eduardo was apprehended on the day his 'package' arrived in Dieziland.
16. Upon his capture, Eduardo was taken to a

remote PMD outpost for interrogation. General Niviera, together with Colonel Maximilian Diaz, interrogated Eduardo for almost 11 hours but he did not tell them anything. In fact, he kept laughing, saying that his ‘boys’ would soon come to get him. He even spat at General Niviera, telling him that with each passing minute, his drugs and girls would be halfway across the globe to fetch his price. In anger, General Niviera punched Eduardo in the face before storming out of the room. As he headed for the door, he said, ‘Diaz, you know the drill. Toughen it up, let this worthless piece of garbage [he used a different word] crack! Whatever it takes! We cannot waste time while his men are getting closer. Find out where they are.’

17. At that point, Maximilian Diaz indicated that he was uncomfortable and needed some air. He disappeared. Soldiers from other countries were eventually called in and later that afternoon took over the interrogation. Diaz was instead instructed to go uphill to be on the lookout for possible intrusions by Eduardo’s ‘boys’ or other rebel groups loyal to him. As he went up the hill, he heard Eduardo shriek in pain, his screams echoing across the mountain. At that point, Diaz called his wife from a cell phone he had taken from Eduardo earlier. He complained to her as follows, ‘This is not what I signed up for, I don’t know who are the bad and the good ones any more. I am coming back home.’
18. Eduardo’s men, who were monitoring their boss’ phone, managed to pin down his location. Within a short period of time, Eduardo’s men arrived, surprising General Niviera and the remaining soldiers. After an extensive

exchange of fire, Niviera and his men won the day, but three of his soldiers were killed and he sustained serious bullet wounds.

19. The fight between Eduardo’s men and General Niviera occurred after they had succeeded in extracting information on the whereabouts of his drugs and the girls who were being trafficked. With little resistance, the drugs were seized and about 60 girls were rescued. General Niviera was hailed as a national hero in Pemistonia, while the Chief of Army Staff announced his imminent promotion to the rank of Field Marshal next year, the highest rank possible for a Pemistonian army officer.
20. The Pemistonian Constitution grants absolute immunity to the Prime Minister from all civil and criminal proceedings during his tenure, which is five years. At the behest of Dieziland, General Niviera was arrested and presented before the Pemistonian Court Martial in February 2019 on charges concerning alleged irregularities in conduct during the PMD mission . However, the Court Martial acquitted him of all charged, holding that all actions by General Niviera and his brigade were in accordance with PMD’s mandate under the UNSC Resolution 12/2019.

## II. Statement of Issues

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Based on the facts above, the court will be hearing arguments on the following three legal issues:

1. Whether the International Criminal Court has jurisdiction to hear the case or not?
2. Can Prime Minister Ariel Montero be found guilty of the crime of aggression?
3. Has Eduardo del Junko become a victim of torture? If yes, which entity is responsible for this crime?



# III. Witnesses

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1. Rick Davidson, PW1.
2. Prime Minister Ariel Montera, DW1 and prime accused in Issue 1.
3. Colonel Maximilian Diaz, PW2.
4. General Andres Niviera, DW2 and prime accused in Issue 2.