STATEMENT OF THE FACTS

The African country of New Atria is a former colony of Belor. Belor has been a Member of the Organization of American States (OAS) since 1948, and both are Members of the United Nations. In 1985, a segment of New Atria’s ethnic minority Corpion population joined together to form a group known as the Scorpions. The Scorpions advocate a radical approach, seeking to sever the ties between Belor and New Atria. Along with other concerns, the Scorpions share the belief held by many Corpions that they “cannot expect equal and impartial treatment in the judicial system” and that the majority Drune population prevents them “from participating effectively in the conduct of public affairs”. In 2002, The UN Human Rights Committee expressed deep concern about the administration of justice in New Atria and reported that Corpions in New Atria could not expect equal and impartial treatment in the judicial system. Among other acts of violence, the Scorpions were responsible for the series of bombings that commenced in the mid-morning hours of June 1, 2001. Belor condemned the bombings and vowed to crush the Scorpions and their supporters.¹

The night of June 1, 2001 was witness to armed attacks by New Atrian armed forces against Scorpion members and supporters suspected of operating in Venzaar, a city neighboring New Atria’s capital. Beloran troops soon joined the conflict to assist the New Atrian forces. During the two-week battle that ensued, Belor’s armed forces captured 56 individuals who were transported to an abandoned fortress, known as the Citadel, located in the south of New Atria. An agreement between New Atria and Belor granted Belor “control over [the] premises and security of the Citadel, as well as the authority to enact, adjudicate and enforce laws for the order and governance of the facility and its inmates”. The agreement also provided Belor’s armed forces with immunity from civil and criminal processes in New Atrian courts. The countries agreed that the bilateral agreement would last through the duration of the conflict with the Scorpions.²

Men and women alike between the ages of 16 and 63, who were captured by Belor’s armed forces, are forcibly detained together in the Citadel. The detainees are

¹ Hypothetical, at 1–3.
² Ibid., at 3, 4.
nationals of New Atria or other third countries. The Beloran government has denied the detainees privileged status and the protections afforded by the Third and Fourth Geneva Conventions. Because Belor maintains that the detainees were captured during armed conflict, Belor claims the right to hold the detainees until the cessation of the conflict with the Scorpions.\footnote{Ibid., at 4.}

On June 27, 2001, after the 56 individuals had been detained in Venzaar and the armed conflict shifted into a northern province of New Atria, Belor issued an order establishing a tribunal in New Atria setting forth the crimes under which the Citadel detainees are to be prosecuted. Among the crimes defined are crimes against humanity, war crimes and acts of terrorism. The crime of terrorism is defined in the order as:

(a) any act that provokes, creates or maintains a state of anxiety, alarm or fear in the population or in a sector thereof;
(b) any act:
   (i) against the life, health or personal security of any person; or
   (ii) against the security of public buildings, roads, or means of communication, power or of transport of any type;
   (iii) using arms, explosive materials or any other means capable of causing damage or grave disturbance of the public peace, international relations or the security of society;
(c) any act or omission that constitutes a crime under an anti-terrorism treaty to which Belor is a Party...\footnote{Ibid., at 4, 5.}

Those charged with these crimes are to be tried before a special tribunal with a panel of three retired judges and will be given the right to appeal their conviction to the Belor High Court. The order provides that those charged with crimes will be given a military defense attorney assigned by Belor’s minister of national defense to assist them in their trial. The order sets forth special rules relating to testimony, production of evidence, publicity of the proceedings and privileged information. The maximum penalty that can be imposed for such crimes is death.\footnote{Ibid., at 5.}

Information received from the five detainees who were arbitrarily released from the Citadel reveals that some of those who continue to be detained at the Citadel were captured by Beloran forces by mistake during the armed conflict at Venzaar. Further testimony by the detainees indicates that although they never witnessed physical assault, Belor officials did use techniques to gather information, including