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**The Problem**

**INTERNATIONAL CRIMINAL COURT, THE HAGUE**  
**BEFORE THE TRIAL CHAMBER**  
**CASE NO. 1 OF 2007**

***The Prosecutor v. Joseph Tubuko, et al***

Libertaria and Karatanga are two neighbouring independent states, both situated on the coast of the Sea of Thethys. Libertaria lies to the north of Karatanga. Their common eastern neighbour is Mirambique, separated by a long chain of Aravali Hills. The great river Mazon commences its 3,500 kilometre long journey from the Pamirian mountains that cut through the central parts of Mirambique, meanders along the northern border of Libertaria and then traverses through the middle of Libertaria and Karatanga from the northern border of Libertaria to the southern border of Karatanga almost parallel to the coastline, and then turns eastward and becomes the southern boundary river for Karatanga as it empties into the Sea of Thethys. A number of tributaries originate from Pamirian Mountains and flow through Libertaria and Karatanga and join the Mazon, considerably augmenting its flow, and making it the largest river on the continent of Astoria.

Being part of the equatorial region, these three central Astorian states have dense rainforests all along the Mazon, its tributaries and the smaller mountain ranges that crisscross the region, extremely rich in forest products, tea, coffee, cocoa, rubber, spices, varieties of fruits, and vast stretches of cultivable lands. The area is inhabited by a number of major and minor tribes each of which has its own language (dialect?). The tribes along the Mazon were all Karmiks, followers of the Karmik religion that worshipped Rha, the legendary serpent that they believe holds the earth aloft and prevents it sinking into the eternal void. They cremate their dead and keep the ashes in mudpots buried behind the Rha temples.

Arantic traders came sometime in 16th century from the nearby Gondvanian continent in search of spices and engaged in trade with the Karmik tribes mainly along the banks of the Mazon and the coasts of Libertaria and Karatanga. The foreigners mixed with the

local tribes and some left behind their children born out of the tribal girls while many settled down with the girls they married. Naturally, most of these tribes were converted to the Arantic religion that believes in a formless god, and permits prayers in the respective tribal languages and burial of the dead in a separately designated burial ground part of which would also serve as a community prayer hall in each village, where weekly prayers are held. The burial grounds and the prayer halls (together known as *Muktidhams*) are deemed sacred places.

The mountain tribes in all the three countries follow some form of animistic rituals each tribe differing from the other, but the religion is commonly known as Naasthism. They worship their ancestors in village temples, which are magnificent works of the traditional Swahelian art. They claim to be direct descendants of a great ancient civilisation and an empire known as the Swahelian that had ruled nearly the entire continent for over seven hundred years before Christ. After the fall of this empire, in 12 AD, there were incessant wars between some of the dominant tribes to establish supremacy. The Naasthists were the most powerful tribe in the central Astoria.

The industrial revolution of the 18th and the 19th centuries on the continent of Gondvania drove Gondvanian countries into a frantic quest for raw materials. Small wonder they were attracted by the nearby continent of Astoria. The quest for raw materials led to establishment of colonial empires, and internecine quarrels. The Congress of Berlin 1885 arbitered these quarrels, by recognising Arantia's sovereignty over the central Astoria, while imposing on the Arantic colonial administration an obligation to guarantee the right to free navigation and free trade to all Gondvanian states and their citizens through all its rivers, including the Mazon and its tributaries. Indeed, in terms of the then existing international relations, the entire Astoria remained a "Dark Continent" as the great historian Herodotus had described it, and the Astorian tribal polities were not 'civilised' enough to be recognised and consulted at the Berlin Congress which was after all a congregation of civilised Gondvanian states.

Since then the Arantic sovereignty was firmly established in central Astoria. The Arantic imperial administration quickly divided the territory under its control into three administrative districts, identical with what are present Libertaria, Karatanga and Mirambique. The district boundaries were drawn rather arbitrarily, for administrative convenience, often in total disregard for the principle of integrity of a tribe and as a result many tribes got divided. However, the stability of the Arantic imperial administration was founded on blood. The imperial administration found ready support from many of the Naasthist tribes of Mirambique due to their traditional rivalries with the tribes of Libertaria and Karatanga. The Naasthists had not forgotten, even through the mists of history, the role played by these tribes (particularly those of Libertaria now converted to Arantic religion), in the downfall of the Swahelian Empire. The Naasthist folklore abound in stories of legendary courage and fighting qualities of the Swahelian warriors, and the merciless massacres of their people by the cunning Karmik tribes who were even accused of being cannibals.

After the Second World War, Astorian continent too was swept by the waves of nationalism. Finally, on 15 August 1991, the Arantic Empire in central Astoria broke into three independent countries. The independence came after a 20 year long bloody war with the colonial administration. The end of the Cold War facilitated action by the UN Security Council, as with the disappearance of the Soviet Union Arantia had lost a powerful friend. After negotiations with Arantia and the three Great Councils of Chiefs of Libertaria, Karatanga and Mirambique, the Security Council by resolution 678 of 13 March 1991 decided that the Arantia should withdraw from Astoria, that pursuant to the several successive resolutions of the UN General Assembly since its Resolution 1514 of 1960, the three districts be given independence with effect from 15 August 1991, and that until popular elections were held, the respective Great Councils of Chiefs administer the three countries. The Security Council also imposed on the three new countries the obligation to ensure compliance with the third party rights through the rivers, and the freedom of trade, as recognised by the Congress of Berlin 1885.

East Rand Central Gold Mining Company is a Eurasian minerals multinational company headquartered in Eurasia, a prosperous country neighbouring Arantia in Gondvania. It has been operating since 1901 in many parts of Mirambique and the eastern borders of Libertaria and Karatanga, The Naasthist highland tribes have been the natural beneficiaries of the operations of the company whose workforce were mostly drawn from the hilly mining regions. These tribes also received royalties from the operation of East Rand under a 99-year lease for the exclusive exploitation of mines and trade in all minerals in the Arantic colonial empire. In East Rand's view, its business interests are reaffirmed and well protected by the Security Council Resolution 678. The company discovered huge deposits of nickel ore in 1964 along the Aravali Hills, just within the eastern borders of Libertaria, which made Libertaria number three in the world nickel production.

The democratic experiment in the three Astorian nations led to three different results. In Libertaria, a tripartite system arose with political parties following religious lines (National Socialists predominantly of Arantics, Democratic Nationalists predominantly of Naastists and Social Democrats predominantly of Karmiks), yet the elections produced stable governments because the governments practised secularism and social toleration. In Karatanga, in spite of the three religious parties, there could be no stable government, until in 1994 the army stepped in and decided that one-third of members of Parliament should be nominees of the army and the rest to be elected by open elections, and that the Prime Minister should also be an army nominee. Three successive elections produced volatile coalition governments in Mirambique, and finally the army took over the governance in March 1996, and it appointed a 20-member Revolutionary Council headed by the Chief of the Army.

In the August 2005 elections in Libertaria, the National Socialists and Democratic Nationalists jointly mustered a comfortable majority and elected an Arantic leader, Roger Tshombe as the Prime Minister. Tshombe has been a vocal supporter of nationalisation of all mining activities in the country, as he prescribed it as a panacea for strengthening what is essentially an agricultural economy. Indeed, this was one of the

issues on which the coalition won the elections. Soon after forming his government, Tshombe sought to nationalise all mining activity in the country through an ordinance. President Joseph Tubuko rejected the cabinet's request for promulgation of the nationalisation ordinance, contrary to the constitutional provisions. Tubuko, though a Democratic Nationalist, was an ultra-conservative Naasthist, who was suspected to have had links with East Rand. The battle-lines were drawn between the supporters of the Prime Minister and those of the President. Both sides began organising their respective cadres and tribes for an eventual showdown.

The situation in Libertaria slowly began deteriorating into a civil war between the pro-Tshombe Arantics mostly living on the eastern and western banks of the Mazon and the pro-Tubuko Naasthists, mostly from the rugged mountainous regions. General Noa Tendon, the Prime Minister of Karatanga, himself a hardcore Naasthist, decided to make hay while the sun shone. He decided to help President Tubuko's supporters by slipping through the porous borders arms and ammunitions and plenty of Karatangan troops in civilian clothes as volunteers. This was well appreciated by General Rambo Chicanoooga, the Chairman of the Mirambique Revolutionary Council, who has actively been promoting the training, arming and equipping of a Libertarian Naasthist terrorist group (Libertarian Liberation Front: LLF) in guerrilla warfare through a number of camps dotted all along the border with Libertaria. LLF has been regularly striking at Arantic strongholds in Liberia. However, LLF operations in Libertaria were outside any control from the Mirambique government. Both its chief Col. Sano NBonga as well as the Mirambique government ensured this.

On 24 March 2006, Roger Tshombe was on the way to his official business, his car was ambushed. He died on the spot. It was widely believed that this was the handiwork of certain pro-Tubuko militants who had just crossed the border after training in a nearby terrorist camp in Mirambique. This triggered serious fighting all over Libertaria between the Pro-Tshombe Arantics and Pro-Tubuko Naasthists. President Tubuko proclaimed a national emergency, appointed his close confidant and fellow Naasthist, General Patton Trinube, as the chief of the Libertarian armed forces, and by an official decree of 27 March 2006 authorised him "to take whatever action necessary to quell the fighting and as far as possible to eliminate the pro-Tshombe militancy."

Manos Tshombe, the former Libertarian Minister of the Interior and a brother of the late Prime Minister Roger Tshombe, took over the leadership of the pro-Tshombe rebels. Determined to teach the President a lesson and send a stern warning of terror to Tubuko supporters from both inside and outside the country, he led a dedicated group of fighters, laid a surprise siege to the President's Olongo tribe living in a cluster of six villages in Longos in the central Libertaria, with the help of the surrounding Arantic tribes, and massacred the entire Olongo tribe. The *Astoria Sun* of 26 June 2006 reported as follows-

"Manos Tshombe's armed men attacked several times the local population in the six Naasthist villages, often raping and pillaging like maniacs. Those who resisted were branded Tubuko supporters and faced detention or death. The

Tshombe men accused the villagers of collaborating with the President, they returned again and again to the villages at night and extract revenge. Sometimes they marched the villagers into the bush to work as human mules, starving them to death. At the end of two weeks of the siege, only ten of the 9000 villagers were found alive in these villages, perhaps because they were Arantics. The deathly stink emanated from the badly mutilated human bodies strewn around. The marauders did not even spare the ancient Naasthist temples that were UNESCO protected monuments."

This incident in fact further strengthened the resolve of the Libertarian national army dominated by pro-Tubuko Naasthist factions to suppress the rebels by whatever means possible. The Naasthist tradition sanctioned the rule of an-eye-for-an-eye, if peaceful measures failed to secure justice. The traditional measure of justice demanded payment of 20 cattle heads for each loss of human life. General Trinube demanded of the pro-Tshombe tribes adequate payment of compensation to settle the issue within 36 hours. Manos Tshombe ridiculed the proposal.

On 30 June, a Rapid Action Force (RAF) from General Trinube's army led by Lt. General Jacob Smith and his five trusted partners of International Security Inc., a private security firm in Eurasia (all of them had contracts with the Libertarian army to train the RAF) mounted an attack on nine Arantic villages of the Timbaloon region, the birthplace of the late Roger Tshombe. The attack force was also participated by the 'volunteers' from Karatanga and the terrorists trained by Mirambigue training camps. All Arantic villages in Timbaloon were decimated by carpet bombing by an RAF. This included the Redfort, a 14th century Swahelian fort made of red stone with exquisite Greco-Arantic art tastefully carved in, and a number of schools. The entire forests were destroyed forever by the use of Agent Orange. The attack force staged more than a reverse repeat of the Longos. "Revenge" was the warcry! Subsequently, however, General Trinube clarified that his forces never meant to destroy the Redfort, schools and forests, and that it happened because of a technical flaw in the bomb release mechanism in the bomber.

The attack on Timbaloon triggered a full scale anti-Arantic witch hunting throughout the country. Lt. General Jacob Smith led from the front. He instructed his subordinates: "I do not want any Arantic prisoners of war. I will be happier if no Arantic stays alive." This statement was circulated among the non-Arantic rank and file of the army. It was discovered that Manos Tshombe along with 220 of his followers was hiding in a cave in his native village in Timbaloon. A battalion of RAF led by Col. Ramsey McGibbon, a partner in International Security Inc. killed them all by using a poison gas.

The *Astoria Times* of 26 November 2006 at p.7 carried a long interview with Richard Martin, a representative of Amnesty International, which had released a report just a day before from AI's London headquarters. The following is an extract from Martin's statement:-:

“Almost five months of fighting has killed half a million Aasthiks. Many of the dead are Arantic children... The LLF kidnaps Arantic and non-Arantic children between 9 and 14 years of age and forces them to join its ranks. And so, incredibly, children are not only the main victims of this war, but also its unwilling perpetrators... Many Arantic girls told me, they had been given to RAF commanders as "wives" and forced to cohabit with them so that they would bear Naasthist children. The boys said they had been forced to walk for days like human mules carrying military supplies through inaccessible jungles from one village to another, always aware that they would be killed if they showed any weakness or hesitation. In some cases, Arantic children are forced even to mutilate and murder their family members. Every night up to 10,000 children walk into the nearest Arantic night shelters, because they are not safe in their own beds. More than 25,000 children have been kidnapped by the Libertarian army alone and an average of 20 children has been abducted every week. On a rough estimate some 125,000 Arantic tribesmen, men and women of all ages including children have lost their lives in the five months of fighting. Some 10,000 Muktidhams were devastated and desecrated”

The Amnesty International's report of 25 November raised alarm at the United Nations. However, all the three central Astorian governments promptly denounced it being one-sided and based mostly on video-clippings and video-recording of sympathisers of Tshombe factions. They also pointed to the ominous silence of AI when the Longos massacre took place. The UN Secretary-General, after receiving official reports from his Astorian regional representative, convened an emergency meeting of the Security Council, acting under Article 99 of the UN Charter. The Security Council heard various delegations. The Libertarian ambassador argued that the tribal conflict was the result of the Longos massacre by the Arantic groups led by Manos Tshombe, that attempts were made at peaceful resolution by traditional methods, that the internal crisis is being quelled effectively with the help of neighbouring governments such as Karatanga and Mirambique, and Eurasia, and that the government of Libertaria was almost on the verge of taking total control of the entire situation. This statement was supported by the three states which argued against the Council's intervention. Should there be a UN intervention, it should be in support of the government of Libertaria, they contended. As a result of a week long negotiations, Eurasia, one of the veto-wielding powers and a close friend of Mirambique, was persuaded to abstain from voting on the issue. On 6 December 2006, the Council finally adopted, acting under Chapter VII of the Charter, Resolution 1540 declaring that a civil war existed in Libertaria, that acts of genocide and crimes against humanity have been committed by all sides of the conflict, and that all parties to the conflict forthwith cease and desist from any acts of hostilities, acts of genocide and crimes against humanity. The resolution also requested the International Criminal Court to investigate, try and duly punish the guilty persons. By the same resolution, the Council authorised a UN Peacekeeping Force for Libertaria (UNPFL) to restore peace and security “with all means that it might deem necessary for the purpose,” and “to cooperate with the International Criminal Court in apprehending and arresting any accused persons and ensuring their production before the Court.”

Pursuant to Resolution 1540, the Pre-Trial Chamber of the ICC authorised the Prosecutor of the ICC, Justice James Jackson, an eminent former judge of the Federal Court of Rangoonia, to cause investigation of the case so referred to by the Security Council. The Chief Prosecutor on 28 June 2007 filed before the Pre-Trial Chamber the first set of indictments against General Patton Trinube, Col. Ramsey McGibbon, Lt. General Jacob Smith, Col. Sano NBonga, and even against President Joseph Tubuko himself. (These are the only indictments relevant to the present case).

Soon thereafter Tubuko resigned as President of Libertaria and went into hiding, believed to be somewhere in Mirambique. At the intervention of the UNPKFL, peace came to be re-established in Libertaria. As the country began limping back to normalcy, with the Speaker of Lower House of Parliament taking over the presidency until the next elections (pursuant to the Constitution of Libertaria), a national government of unity was formed. The government sought the assistance of UNPKFL in apprehending and arresting all persons indicted by the ICC. As a result, all those indicted on 28 June 2007, with the exception of former President Tubuko, were arrested and placed under the custody of ICC. However, the apprehension of Tubuko took a longer time as Mirambique argued that it was not a party to ICC Statute, and that it questioned the validity of Resolution 1540. At last with the help of Eurasian mediation, cooperation of Mirambique was secured. With the assistance of the Mirambique government, the UNPKFL succeeded in apprehending and arresting Tubuko by 31 March 2007. Investigation for collection of evidence continued, and finally a joint trial of all the accused persons will commence at The Hague from 5 January 2008. In the meantime, the accused persons have moved the Supreme Court of Libertaria for a writ of *mandamus* requiring the Government of Libertaria to have them tried in the criminal courts of Libertaria and the Supreme Court has appointed an eminent lawyer as *amicus curiae* to participate in the writ proceedings.

Libertaria is a party to the Statute of ICC, and all relevant treaties.

If you are representing the Prosecutor of the ICC, what are the offences for which the accused have been indicted and the grounds therefor? How would you argue that the accused have no tenable defences?

If you are representing the accused, what all defences are open to the accused, in respect of both jurisdictional and admissibility issues as well as issues on merits, including those of evidence?