

# **Renmin University of China**

## **Law School**

**Applicant**

**Li Jing**

**Liu Yiqiang**

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## **PLEADINGS AND AUTHORITIES**

### **I. ICC has jurisdiction over the present case.**

All the crimes charged in the following were committed after the entry into force of Rome Statute.<sup>1</sup> All the crimes charged fall within Article 5 of the Statute. Also, the case was referred by the Security Council, thus the preconditions to exercise of jurisdiction have been satisfied under Article 12 of the Statute.

### **II. The case is admissible.**

In accordance with Article 53 (2) (b), The prosecutor respectfully submits that neither of the two grounds provided in Article 17 to challenge the admissibility exists.

#### **A.Gravity:**

A case is inadmissible where no sufficient gravity to justify further action by the Court.<sup>2</sup> For all the reasons stated in the current application, the case is of sufficient gravity.

#### **B.Complementarity:**

A case is inadmissible where it is being investigated or prosecuted by a state, which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.<sup>3</sup> The prosecutor is aware of the complementary feature of ICC's jurisdiction, yet submits that, it constitutes no impediment to the admissibility to the Court in this case.

#### **i. Neither investigation nor prosecution proceeding has been initiated by Libertian national court.**

As established in the warrant application decision of *Lubanga* case, it is a *condition sine qua non* for a case arising from the investigation of a situation to be inadmissible that national proceedings encompass both the person and the conduct,

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<sup>1</sup> Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9 (hereinafter "Rome Statute")

<sup>2</sup> Ibid., article 17 (1) (d).

<sup>3</sup> Ibid., article 17 (1) (a).

which is the subject of the case before the court.<sup>4</sup> In other words, where a pending national proceeding, investigation or prosecution, does not encompass the same subject, it will not render the case inadmissible.

In this case, the pending writ of *mandamus* proceeding does not qualify as an “investigation” or “prosecution”. The fact that the Supreme Court has appointed an *amicus curia* only evidences commencement of a writ proceeding, not necessarily implies commencement of a criminal prosecution. Therefore, there is no pending investigation or prosecution proceeding in Libertaria, and this case is admissible.

## **ii. Libertaria is genuinely unwilling to carry out the prosecution**

To the extent a writ of *mandamus* proceeding does qualify a national proceeding, this case is still not rendered inadmissible, because Libertaria is genuinely unwilling to carry out the prosecution.

In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principle of due process recognized by international law, whether the proceeding is being undertaken for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court.<sup>5</sup>

A writ of *mandamus*, is not consequently granted, but only at the discretion of the Libertarian Supreme Court. Moreover, the discretion is not exercised in favor of the applicant, unless some just and useful purpose may be provided.

In this case, it was the five accused who moved for a writ of *mandamus* to have themselves tried right before the commencement of ICC’s joint trial. If it is otherwise granted, Libertarian court must have a devious intent to shield the accused’s criminal responsibility. In neither case would this case be rendered inadmissible.

## **III. Attack in Zimbaboon Region**

It is submitted that, by leading this attack against civilians and protected objects, Lt. General Jacob Smith commits crime against humanity and war crimes; and General Kanube should bear superior responsibility.

### **A.Lt. General Jacob Smith commits crime against humanity of**

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<sup>4</sup> Pre-Trial Chamber I Decision on the Prosecutor’s Application for a warrant of arrest, ICC-01/04-01/06, 10 February 2006. para. 31

<sup>5</sup> Note 1, article 17 (2) (1)

**extermination under Article 7 (b) of Rome Statute and war crime of attacking protected objects under Article 8 (2) (e) (iv); thus should bear individual responsibility.**

Lt. General Jacob Smith led Rapid Action Force (“RAF” thereafter) and attacked the Zimbaboon Region that resulted in the decimation of all Arantic villages in this region and the destruction of Redfort, schools and forests. The former constitutes crime against humanity and war crime of attacking civilians, and the latter constitutes war crime of attacking protected objects.

### **(1) Crime against humanity of extermination**

Crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population.<sup>6</sup> Four elements need to be satisfied under this crime: the killing of one or more persons; the conduct constituted as part of a mass killing of members of civilian population; context of a widespread attack against civilian population; and the intent of the perpetrator.<sup>7</sup>

In the present case, the carpet bombing over the nine Arantic is a widespread attack against civilian population; the decimation of all the villages is a mass killing; and the attack is intentionally mounted as “revenge” to Manos Tshombe’s attack of the six Naasthist civilians as it staged more than a reverse repeat of the Longos.

### **(2) War crimes**

#### **a. Attack on protected objects**

The attack on Redfort, schools and forest in Zimbaboon Region without military necessary is also prohibited by law of armed conflict and constitutes war crime of attacking civilian protected objects under Article 8 (2) (e) (iv).

#### **b. Using Agent Orange**

Customary international law, which is also applicable law for the Court and can be basis of charges,<sup>8</sup> prohibits the use of chemical weapons in both international and

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<sup>6</sup> Rome Statute, article 8 (1)

<sup>7</sup> Elements of Crimes, p.6; *Prosecutor v. Kistic*, IT-98-33-T,(August 2, 2001) para.494; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, para.142.

<sup>8</sup> Rome Statute, article 21(1)(b) and article 22(3).

non-international armed conflicts.<sup>9</sup> The ICTY held that “there undisputedly emerged a general consensus in international community on the principle that the use of [chemical] weapons is also prohibited in internal armed conflicts”.<sup>10</sup> Using prohibited weapons is a war crime.<sup>11</sup>

#### **B. General Kanube is liable for the attack under Superior responsibility Doctrine.**

Superior responsibility holds superiors liable for crimes perpetrated by their troops.<sup>12</sup> Apart from a superior-subordinate relationship,<sup>13</sup> the superior’s actual or potential knowledge of crimes perpetrated or about to perpetrate,<sup>14</sup> and the former’s failure to take adequate measures to prevent or repress breaches are necessary.<sup>15</sup>

General Kanube bears superior responsibility for the attack in Zimbaboon Region since these three requirements are all satisfied. RAF is one part of General Kanube’s Libertarian army and therefore, the superior-subordinate relationship exists between General Kanube and Lt. General Jacob Smith. By his clarification after the attack, General Kanube admitted the existence of this relationship and moreover, admitted his actual knowledge on the attack and its consequence. However, General Kanube did not take any measure to prevent this tragedy, nor to punish his subordinate perpetrator.

#### **IV. Killing Manos Tshombe and his followers by using poisonous gas.**

Lt. General Jacob Smith instructed his subordinates that no quarter would be given to Arantics. After discovering Manos Tshombe and his followers hiding in a cave, Col. Ramsey McGibbon led a battalion of RAF and killed them with poisonous gas.

#### **A. Col. Ramsey Gibbon and Lt. Jacob Smith committed war crime by employing poisonous gas.**

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<sup>9</sup> Customary international humanitarian law, volume I: Rules, Jean-Marie Henckaerts and Louise Doswald-Beck. p. 259; Chemical Weapons Convention, article I

<sup>10</sup> *Tadic* case, Interlocutory Appeal

<sup>11</sup> *Supra* 8, p. 583

<sup>12</sup> Rome Statute, article 28(2); 1977 Protocol Additional to the Geneva Conventions, article. 86; ICTY Statute, article. 7(3); ICTR Statute, article. 6(3).

<sup>13</sup> *Prosecutor v. Aleksovski* (Judgment), ICTY-IT-95-14/1-T, p.78 (Trial Chamber 1999)

<sup>14</sup> *Prosecutor v. Delalic* (Judgment), ICTY-IT-96-21-T, p.346 (Trial Chamber 1998)

<sup>15</sup> *Prosecutor v. Krnojelac* (Judgment), ICTY-IT-97-25-T, p.95 (Trial Chamber 2002)

Col. Ramsey used poison gas to kill Manos Tshombe and his follower, as elaborated before, this constitutes war crime under customary international law.

**B. By his instructions, Lt. General Kanube commits war crime of denying quarter.**

There are five elements for war crime of denying quarter: order of no survivors; intent of threaten or conduct hostilities; effective command or control; context or association with an armed conflict not of an international character; awareness of existence of an armed conflict.<sup>16</sup> By instructing, Jacob Smith substantially orders no quarter will be given and all the other four elements are also satisfied in the present. Therefore, Jacob Smith committed war crime of denying quarter under Article (2)(e) of Rome Statute.

**V. Other atrocities in Libertaria**

Libertaria Liberation Army (LLF hereafter) and RAF should be responsible for the five months' atrocities. As the leaders of the LLF and RAF, Sano NBonga and Lt. General Jacob Smith should be individually responsible for the crimes committed by LLF and RAF respectively.

**A. Genocide of preventing birth**

*(1) Actus reus*

Impregnating women constitutes a measure intended to prevent births whenever such a measure is systematically taken to change the ethnic character of the population.<sup>17</sup>

*(2) Mens rea*

*Dolus specialis* is required in Genocide, namely, with the intent to destroy in whole or in part, a national, ethnic, racial religious group.<sup>18</sup> LLF kidnapped Arantic girls and gave them to RAF commanders as “wives” and forced them to cohabit with the latter with the intention to let them bear Naasthist children. Examined in the context of the internal war in Libertaria and the racist instruction given by President

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<sup>16</sup> Elements of Crimes, PNICC/2000/1/Add.2

<sup>17</sup> *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T (on appeal)

<sup>18</sup> Rome Statute, article 6

Rabuko and Lt. General Jacob Smith, the underlying purpose of this measure is to prevent Arantic girls from giving birth to Arantic children.

## **B. Crimes Against Humanity**

During five months of fighting in Libertarians, LLF and RAF's kidnapping and other conducts constitute crimes against humanity under Article 6 of Rome Statute.

### **(1) Crimes against humanity of enslavement**

LLF and Libertarian Army kidnapped children of both races and forced the boys to carry military supplies like human mules without any mercy. The statistics<sup>19</sup> showed that this is widespread atrocity throughout Libertaria. LLF violated international humanitarian law which protected the civilians from forced labor and its leader committed crimes against humanity under article 7(1)(c) of the Rome Statute.

### **(2) Crimes against humanity of forced pregnancy**

As elaborated earlier, LLF and RAF forces also committed crimes against humanity of forced pregnancy under Article 7 (g) of the Statute.

## **C. War Crimes**

### **(1) Conscripting and using children under age of fifteen years**

The LLF kidnapped children under 15 to join its ranks. This alone violated Article 8(2)(e)(vii) of ICC Statute and constitutes war crimes of using, conscripting children.

### **(2) Violation of Article 3 common to four Geneva Conventions**

Common Article 3 prohibits murder and mutilation. Using another person to commit a crime is punishable under Article 25(3)(a) of the Statute. After being kidnapped, the Arantic children were forced to mutilate and murder their family members. Therefore, the LLF and RAF forces committed war crimes of mutilation and murder under Article 8(2)(c) of the Statute.

## **D. Superior responsibility of President Rabuko and General Kanube**

### **(1) Effective authority and control over RAF**

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<sup>19</sup> Moot problem, para.14.



President Rabuko and General Kanube had effective authority and control over RAF and LLF in Libertaria. RAF is a part of the General Kaunbe's army and General Kanube admitted this by his clarification for "his force". President Rabuko had effective control over RAF since he personally appointed General Kanube as the chief of the Libertarian armed forces and gave them authorization by an official decree.

## **(2) Actual knowledge**

Given the scale and the continuing of the atrocities in the fighting, they either knew, or should have known, or consciously disregarded information, which clearly indicated that the subordinate were committing, or about to commit such crimes.<sup>20</sup>

## **(3) No measure to prevent or punish**

In all relevant times, they did not take any measures to prevent or repress their commission or to submit the matter to competent authorities for investigation and prosecution.

Conclusively, President Rabuko and General Kanube bear superior responsibility under Article 28 of the Statute for RAF and LLF's commissions.

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<sup>20</sup> Rome Statute, article 28(a)(i) and (b)(i); Yamashita Case, U.N. War Crimes Commission, 4 Law Reports of Trials of War Criminals 3-4 (1948).

### **PRAYER**

The Prosecutor (Applicant), thus, respectfully request the this Honorable Court to adjudge and declare that:

1. The Court has jurisdiction on this case and the case at bar is admissible
2. Lt. General Jacob Smith and General Kanube, as the Commander, are liable for the attack in Zimbaboon region.
3. Col. Ramsey Gibbon and Lt. General Jacob Smith should be Responsible for killing Manos Tshombe and his followers by using poison gas
4. Sano NBonga, Lt. General Jacob Smith and General Kanube are responsible for atrocities took place in Libertaria and General Kanube as well as President Rabuko is criminally responsible under Command Responsibility Doctrine