

**1st RED CROSS INTERNATIONAL HUMANITARIAN
LAW • IHL • MOOT (2007)**

CASE CONCERNING
LIBERTARIA

THE PROSECUTOR

v.

JOSEPH RABUKO, ET AL.

MEMORIAL FOR THE PROSECUTOR

CHINA UNIVERSITY OF POLITICAL SCIENCE AND LAW

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(1956 words)

MOOT NUMBER: 20070101

PLEADINGS AND AUTHORITIES

The Prosecutor of International Criminal Court (“The Prosecutor”), pursuant to the authority stipulated in the Rome Statute of International Criminal Court (“The Rome Statute”), charges:

President JOSEPH RABUKO,
General PATTON KANUBE,
Lt. General JACOB SMITH,
Col. RAMSEY MCGIBBON,
Col. SANO NBONGA,

with **GENOCIDE**, pursuant the Article 6 of Rome Statute; and **WAR CRIMES**, pursuant the Article 8 of the Rome Statute; or alternatively, **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, pursuant the Article 25(e) of Rome Statute; and **CRIMES AGAINST HUMANITY**, pursuant the Article 7 of Rome Statute.

I. ADMISSIBILITY

The case remains admissible under Article 17 of the Rome Statute. Article 17 states that a case is inadmissible in the ICC where “the case 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.”¹ This case is not currently being investigated or prosecuted by the Libertia national courts and the Libertia Supreme Court only moved the accused and appointed a lawyer, but these are not sufficient. The requirement in Article 17 is formulated in order to avoid ‘conflict’ in a state already in the process of exercising jurisdiction and a court’s subsequent exercise. ²This is not the situation in this case, because there is only one investigation in progress, which is the ICC.

¹ See Article 17(1)(a) of the Rome Statute

² See Oscar Solera, *Complementary Jurisdiction and International Criminal Justice*, INT’L REV. OF THE RED CROSS No. 845, p. 145-171.

II. THE ACCUSED ARE GUILTY FOR THE MASSACRE IN ZIMBALOON

AŽ Lt. General Jacob Smith is liable for committing genocide.

1. Genocide means “any of the following acts committing with the intention to destroy, in whole or in part, a national, ethnical, racial or religious group”.³ The requirements of the crime of genocide include two parts: the material elements and the mental elements⁴.

(1) According to the Article 6, the material elements consist of the existence of the protected group⁵ and the culpable acts. As to the protected group, obviously and definitely, the Arantic forms a part of a “ethnic”, or alternatively, “religious” group, both approached by objective elements such as common customs⁶, and subjective ones like perception of a set of people especially the characteristics upon which perpetrators or third parties base their perceptions⁷. As to the acts, the nine Arantic villages were “decimated by carpet bombing by an RAF”, which leads to act of killing under Article 6(a) of the ICC Statue.

(2) The mental element of genocide requires that the material elements of the crime committed with specific intent to destroy a protected group in whole or in part. Obviously what the RAF did, led by Lt. General Jacob Smith, to the nine Arantic villages was “more than a reverse repeat of the Longos”. The use of carpet bombing indicates that the destruction of the Arantic group, in whole or in part, is RAF’s goal, which is sufficient to affirm their specific intent⁸

2. Consequently, the RAF’s attack on the nine Arantic villages falls in the definition of the genocide under Article 6 of the ICC Statue. The person who “commits such a

³ See Article 6 of the Rome Statute

⁴ See Gerhard Werle, *Principles of International Criminal Law*, (2003) at p.193 206

⁵ See *The Prosecutor v. Krstic*, (Trial Judgment) No. IT-98-33-T (‘*Krstic*’) Para.554

⁶ See *Prosecutor v. Akayesu* (Trial Judgment) No. ICTR-94-4-T (‘*Akayesu*’) Para.510

⁷ See *Prosecutor v. Jelisić* (Trial Judgment) No. IT-95-10-T (‘*Jelisić*’) Para.70

⁸ See *Akayesu* Para.520;

See *Jelisić* Para.86

crime, whether as an individual, jointly with another or through another person” or “orders the commission of such a crime”⁹ should be criminally responsible for the crime. As the direct leader and participator of this attack, Lt. General Jacob Smith is individually responsible and liable for the genocide.

B. Lt. General Jacob Smith is liable for committing crimes against humanity.

The individual acts will constitute crimes against humanity when they are committed in the course of a widespread or systematic attack on a civilian population. The Arantic villagers being attacked by RAF are obviously the civil population. The attack is widespread since it involved nine villages and against a multiplicity of victims¹⁰. The attack is also systematic as it was organized by a country’s official military, especially in light of what happened to the Arantics later in the whole country. And the use of carpet bombing is sufficient to fall in extermination. Consequently, Lt. General Jacob Smith should bear individual criminal responsibility for crime against humanity of extermination.

C. General Patton Kanube bears superior responsibility for genocide and crimes against humanity.

As the chief of the Libertarian armed forces, Kanube was the superior of the RAF and had the “material ability to prevent and punish commission of the offences”¹¹. And as the attack on the Arantic villages was so widespread and systematic, that General Kanube “should have known”¹² the forces committed such crimes. However, there is no evidence indicates that General Patton Kanube had taken “all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”¹³ As a consequence, General Patton Kanube is criminally responsible for the crimes committed by his subordinates, namely committing genocide and

⁹ See Article 25(3)(a) and (b) of the Rome Statute

¹⁰ See *Prosecutor v. Tadić* (Trial Judgment) No. IT-94-1-T Para. 648;
See *Akayesu* Para. 580

¹¹ See *Prosecutor v. Mucić et al* (Trial Judgment) No. IT-96-21-T Para. 378

¹² See Article 28(b)(i) of the Rome Statute

¹³ See Article 28(b)(ii) of the Rome Statute

crimes against humanity.

III. LT. GENERAL JACOB SMITH IS LIABLE FOR DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE

The act of Lt. General Jacob Smith is direct and public incitement to commit genocide. The direct element of incitement implies that the incitement assume a direct form and specifically provoke another to engage in a criminal act, and that more than mere vague or indirect suggestion goes to constitute direct incitement.¹⁴ “Public” means, in particular, the appeal made in a public place or through a medium targeted at the public.¹⁵ “The deciding factor is that the appeal be aimed at a non-individualizable audience and thus create or enhance the danger of uncontrolled commission of the crime.”¹⁶ The *mens rea* required for this crime lies in the intent to directly prompt or provoke another to commit genocide.

As the leader of the RAF, General Jacob Smith has directly and publicly incited his subordinates to commit genocide. Furthermore, the incitement has circulated among the non-Arantic rank in the army and *de facto* promoted the danger of uncontrolled commission of the genocide. Hereby Jacob Smith is criminally responsible for direct and public incitement to commit genocide.

IV. COL. RAMSEY MCGIBBON IS LIABLE FOR EMPLOYING POISONOUS GAS AS WAR CRIMES

In the Blaškić case the Judge believe even the foreign troops present in the areas outside the conflict areas, it inevitably also had an impact on the conduct of the conflict in that zone, it also can characterize the conflict as international.¹⁷ In this case, the help provided by the Karatanga such as the arms and ammunitions and plenty of Karatangan troops in civilian clothes as volunteers, and the Mirambique

¹⁴ See *Akayesu* Para.557

¹⁵ See *Akayesu* Para.556

See *Prosecutor v. Ruggiu* (Trial Judgment) No. ICTR-97-32-T Para.17

¹⁶ See Gerhard Werle, *Principles of International Criminal Law*,(2003) Para.626

¹⁷ See *Prosecutor v. Blaškić* (Trial Judgment) No. IT-95-14-T Para.94

Revolutionary Council's activities in training, arming and equipping the LLF clearly have a significant impact on the conflicts in Libertaria, therefore it turns the internal armed conflict into an international one.

As the armed conflict is international, the employment of poison gas is prohibited by the Rome Statute.¹⁸ Col. McGibbon, the leader and the participator, with a battalion of RAF killed Manos Tshombe and his followers by using poison gas. Consequently, he is personally criminally responsible for war crimes.

V. THE ACCUSED PERSONS ARE GUILTY FOR THE FULL SCALE ANTI-ARANTIC MASSACRE THROUGHOUT THE LIBERTARIA

A. Genocide was committed in Libertaria against the Arantic as a group.

It is indicated *supra* that the requirements of the crime of genocide include the material elements and the mental elements.¹⁹ Notwithstanding the number of victims in the report of Amnesty International is yet to be known with accuracy, no one can reasonably refute the fact that widespread killings and persecution were perpetrated throughout Libertaria.

And another requirement is that these killings and persecution are committed with the intent to destroy, in whole or in part, a particular group targeted as such.²⁰ The massacre was witch-hunting, apparently, and against the pro-Tshombe rebels. However, all the facts have proved that the massacre which occurred in Libertaria *de facto* had a special objective, namely the extermination of the Arantic, who were targeted especially due to their Arantic origin but not because they were rebels. In any case, the Arantic children and pregnant women would, naturally, not have been among the fighters.

Consequently, it could be beyond the reasonable doubt that genocide was committed in Libertaria against the Arantic.

B. President Joseph Rabuko is individually criminally responsible for the

¹⁸ See Article 8(2)(b)(xviii) of the Rome Statute

¹⁹ See Article 6 of the Rome Statute

²⁰ See *Akayesu* Para.117

genocide.

As the President of the Libertaria, Rabuko is *de jure* responsible for maintaining law and public order in the Libertaria. Furthermore, for the fact that Rabuko had the power to proclaim a national emergency and appoint the chief of armed conflict, the President *de facto* had effective authority over the communal police. However he didn't take any measure to prevent and repress the genocide. As a local authority, failed to oppose such killings and serious bodily or mental harm constituted a form of tacit encouragement,²¹ which is a kind of aid and abetment of the crime. And he even ordered the General Kanube to take whatever action to quell the fighting. Hence the said acts indeed incur the individual criminal responsibility of Rabuko for having ordered or otherwise aided and abetted in the preparation or execution of the genocide.²²

C. Col. Sano NBonga is liable for crime against humanity of other inhuman acts.

The perpetrator of this crime should have inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act. And such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.²³

In the context of widespread attack in the Arantic civilian population, the LLF kidnapped children between 9 and 14 years of age and forced them to join its ranks, made them become the perpetrator of the war. First, this category of acts is intended to include only additional acts that are similar in gravity to those listed in the preceding subparagraphs. Second, the act must in fact cause injury to a human being in terms of physical or mental integrity, health or human dignity.²⁴

Consequently, the action of the LLF is crime against humanity of other inhuman acts. Furthermore, as the chief of the LLF, NBonga should be criminally responsible for the crime.

²¹ See *Akayesu* Para.705

²² See Article 25(b) and (c) of the Rome Statute

²³ See The Elements of Crimes for Article 7(1)(k) of the Rome Statute

²⁴ See *Prosecutor v. CLÉMENT KAYISHEMA and OBED RUZINDANA* (Trial Judgment) No. ICTR-95-1-T Para.150

PRAYER

The Prosecution, thus, respectfully requests this Honorable Court to adjudge and declare that:

- (1) President Joseph Rabuko committed genocide; and
- (2) General Patton Kanube is under superior responsibility for genocide and crimes against humanity; and
- (3) Lt. General Jacob Smith committed genocide, crimes against humanity, direct and public incitement to commit genocide; and
- (4) Col. Ramsey McGibbon committed war crimes; and
- (5) Col. Sano NBonga committed crime against humanity.

**RESPECTFULLY SUBMITTED,
AGENTS FOR THE PROSECUTION**