

The 7th Henry Dunant Memorial Moot Court Competition
sponsored by
The International Committee of the Red Cross (ICRC) &
The Indian Society of International Law (ISIL)
New Delhi, India 2007

Henry Dunant Memorial Moot Court Competition: Rules and Guidelines

1. Introduction

The International Committee of the Red Cross (ICRC) is a private, independent humanitarian organisation, based in Geneva, Switzerland. The ICRC has been conferred a mandate by the international community to protect and assist persons affected by armed conflict.¹ This mandate includes the promotion and development of IHL, including in times of peace. In the fulfilment of this responsibility, the ICRC is active in disseminating and promoting IHL within academic circles. This includes developing IHL curricula for universities, conducting university teacher training programmes in IHL and organizing events such as the Henry Dunant Memorial Moot Court Competition.

The Indian Society of International Law (ISIL) was founded in 1959 and was inaugurated in the same year by Pandit Jawaharlal Nehru, the first Prime Minister of independent India. The principal objective of the ISIL is to “foster nation wide, the study and development of International Law and to encourage the comparative study of the application of International Law in other States”. The ISIL has been publishing the *Indian Journal of International Law* since its inception, which has attained a high standard and is held in great esteem the world over. It also publishes the ISIL Yearbook on Humanitarian and Refugee Laws. The ISIL runs post graduate diploma courses on International Law & Diplomacy; Human Rights, International Humanitarian & Refugee Laws and International Trade and Business Laws. It has been actively collaborating with the ICRC in organising the Henry Dunant Memorial Moot Court since 2001.

1.1. The Moot Court

In 2001 the International Committee of the Red Cross (ICRC) Regional Delegation for South Asia initiated the Henry Dunant Memorial Moot Court Competition, with the aim of promoting better awareness of International Humanitarian Law (IHL) among law students at universities throughout India. This competition is named in memory of Mr Henry Dunant, the co-founder of the ICRC in 1863 and spiritual father of the Red Cross and Red Crescent Movement.

The reputation and status of the Henry Dunant Memorial Moot Court Competition has grown steadily since its inception in 2001. The national Moot Court has grown to include more than 64 teams, representing universities from across India. The success of the competition prompted the ICRC, in collaboration with its partner organisation for this activity, the Indian Society of International Law (ISIL), to expand the Moot Court beyond India in 2005. As a

¹ The ICRC's initial mandate is derived the 1949 Geneva Conventions and their 1977 Additional Protocols. The ICRC's mandate was expanded by the Statutes of the Red Cross and Red Crescent Movement, which were agreed to the States Parties to the Geneva Conventions. To date, 194 countries have ratified the 1949 Geneva Conventions.

result, in 2005 the Henry Dunant Moot Court Competition was expanded to include a regional competition, drawing teams from countries across South Asia.

The regional Moot Court competition will follow national and regional competitions (as applicable) that will take place in each participating country. The winning teams from each of the respective countries will participate in the regional competition, which will be held in New Delhi approximately one month after the completion of the national competitions. The winners of the regional moot court competition will represent south Asia in Asian Moot competition, which will be held in Hong Kong.

1.2. Objectives

The principal objective of the Henry Dunant Memorial Moot Court Competition is to develop an increased awareness and interest in IHL in academic institutions throughout South Asia. A further objective is to use IHL to further academic excellence in the student community, and to develop their advocacy skills in an environment of friendly competition.

2. Administration and General Rules

The official name of the competition is *The Henry Dunant Memorial Moot Court Competition* (the "*Moot Court*"). The ICRC and ISIL are the official organisers of the National Moot Court competition in India, as well as the South Asian regional Moot Court competition. National competitions in other participating countries will be organised by the ICRC, in collaboration with partner institutions, including Kathmandu School of Law in Nepal, Dhaka University in Bangladesh and the University of Colombo in Sri Lanka.

2.1. Eligibility

All universities, colleges, and institutions imparting legal education on a regular or evening basis in a program of study that leads to a Bachelors degree in law (LL.B / BL) or Masters in law (LL.M / ML) are eligible to participate in the Moot Court competition. All students enrolled on a full time or evening basis in a program of study leading to or equivalent to a Bachelors degree in law (LL.B / BL) or Masters in law (LL.M / ML), are eligible to participate. Students who have participated in this Moot Court competition on a previous occasion are not eligible to participate again.

2.2. Official Language

The official working language of the Moot Court competition is English.

2.3. Team Composition

Each participating university/college/institute shall nominate only one team consisting of **three** student members, plus a coach from the faculty of the university/college/institute that they represent.

2.4. Assistance to Teams

All research, writing and editing of written memorials for the Moot Court must be the exclusive product of the team members. Faculty members, coaches and team advisors of the participating team may only render external assistance to the team. During oral presentation, all consultation with coaches shall be strictly prohibited.

2.5. Implementation and Interpretation of Rules

Regarding all Moot Court practice and procedures, the final decision on the interpretation and implementation of rules lies with the organisers.

2.6. Application of Rules

Rules contained in this document will be applicable to the Indian National Moot Court competition and the Regional Moot Court competition.

Except where otherwise indicated, these rules are also applicable to the National Moot Court competitions that are organised by the ICRC in Bangladesh, Nepal and Sri Lanka, as well as such other countries that may participate in the future.

There are rules specified in addendum which will be applicable to those countries where the number of participating teams is less than eight. (refer addendum). With exception of the rules in addendum, all other rules and guidelines contained in this document will apply to the competition.

3. Rules for Oral Pleadings and Procedures

In view of the large number of teams are participating in the Indian national round Moot Court competition, this year the organising committee decide to introduce quarter-final round during the competition in India. This year onwards, the Moot Court shall consist of preliminary, quarter final, semi final and final rounds. The Moot Court problem for all rounds, including all national and regional competitions, shall be the same problem. The Moot Court problem shall be prepared annually by a suitably qualified person, to be selected by the organisers. The person selected to prepare the problem shall be provided with instructions by the organisers concerning the nature, scope and issues that should be included in the problem.

3.1. Rules for the Preliminary Rounds

- All participating teams in the competition will be divided by the organisers into various groups, depending upon the number of teams participating in the competition.
- Where necessary, more than one court room will be provided for all competitions, in order to facilitate the smooth functioning of the Moot Court competition.
- The teams shall argue cases against each other; the matching of teams will be decided by a draw of lots prior to the commencement of the competition.
- During the preliminary rounds, each team will have the opportunity to argue both the sides; once as the prosecution and once as the defence.
- Time allotted for arguments will be 10 + 2 minutes for the prosecution and 10+2 minutes for the defence. Extra time will be given to answer questions asked by the judges.
- There will be time allotted for rebuttals. Each team will be allowed 3 minutes for rebuttals during the preliminary rounds.

- Both selected members of the team shall make oral presentations during the each round. The presentations shall be divided equally among the Moot Court participants.

3.2. Rules for the Quarter Final Rounds

- In India, the top sixteen teams from the preliminary rounds shall qualify to participate in the quarter-final. Selection will be based upon the marks awarded by the organising committee after evaluation of the written memorials, plus the marks awarded by judges during the preliminary rounds of oral presentation of the teams.
- In other countries (i.e.) Bangladesh, Iran Nepal, Pakistan and Sri Lanka, there will not be a quarter final round competition. In these countries the moot court shall consists of preliminary, semi final and final round of competition. The top four teams will qualify for the semi-final. The method of awarding marks will be same as for the Indian competition
- The arrangement of teams selected for the quarter-final rounds shall be as follows:
 - In India, those teams that have qualified for the quarterfinal will be divided in to four groups – Group A, Group B, Group C, and Group D.
 - The team that attained the highest score in the preliminary round will compete against the team that attained the ninth highest score.
 - The team with the second highest score will compete against the team with the tenth highest score.
 - The team with the third highest score will compete against the eleventh highest score.
 - The team with the fourth highest score will compete with the twelfth highest score.
 - The team with the fifth highest score will compete with the thirteenth highest score.
 - The team with the sixth highest score will compete with the fourteenth highest score
 - The team with the seventh highest score will compete with the fifteenth highest score
 - The team with the eighth highest score will compete with the sixteenth highest score
- The quarter-final rounds will be conducted during the after noon session of the 3rd day of the competition.
- The sides to be argued by the teams will be decided by a draw of lots, prior to the commencement of the quarter-final rounds of competition. Each team shall be argued both prosecution and defence during the quarter-final round.
- There shall be a break after the first round of arguments. After the break, the teams will change, switch over their position and will have to argue against a new team, as follows:

- The team that argued on behalf of the prosecution in the first round will have to argue on behalf of the defence in the second round against a new team. The team that argued on behalf of defence in the first round will have to argue on behalf of the prosecution during the second round against a new team.
- Each team will be allotted a total of 15 minutes to present its argument during the quarter-final rounds. There will be a warning bell at the end of 12 minutes and there will be a final bell at the completion of the allotted time of 15 minutes.
- There will be extra time allocated to respond to the questions posed by the judges, as necessary. Three minutes will also be allotted for each team for rebuttal in each round.
- Participating teams will be required to strictly follow the time limits.

3.3 Rules for the Semi-Final Round

- In India, the top four teams from the quarter-final rounds shall qualify to participate in the semi-final. Selection will be based upon the marks awarded by the organising committee after evaluation of the written memorials, plus the marks awarded by judges during the quarter-final rounds of oral presentation of the teams.
- The arrangement of teams selected for the semi-final rounds shall be as follows:
 - In India, those teams that have qualified for the semi-final round will be divided into two groups – Group A, and Group B.
 - The team that attained the highest score in the quarter-final round will compete against the team that attained the third highest score.
 - The team with the second highest score will compete against the team with the fourth highest score.
- The semi-final rounds will be conducted during the morning session of the final day of the competition.
- The sides to be argued by the teams will be decided by a draw of lots, prior to the commencement of the semi-final rounds of competition. There shall be two rounds of oral argument during the semi-finals.
- During the semi-final rounds, the teams will be required to argue twice; on behalf of both prosecution and the defence.
- There shall be a break after the first round of arguments. After the break, the teams will change, switch over their position and will have to argue against a new team, as follows:
 - The team that argued on behalf of the prosecution in the first round will have to argue on behalf of the defence in the second round against a new team. The team that argued on behalf of defence in the first round will have to argue on behalf of the prosecution during the second round against a new team.
- Each team will be allotted a total of 15 minutes to present its argument during the semi-final rounds. There will be a warning bell at the end of 12 minutes and there will be a final bell at the completion of the allotted time of 15 minutes.

- There will be extra time allocated to respond to the questions posed by the judges, as necessary. Three minutes will also be allotted for each team for rebuttal in each round.
- Participating teams will be required to strictly follow the time limits.
- Written memorials marks will not be taken into consideration during the marking of semi-final rounds. Only the marks awarded by the judges during the oral round of presentation will be considered to select the finalists.

3.4. Rules for the Final Round

- The top two teams from the semi-final rounds will be selected to compete in the final round of the Moot Court competition.
- The final round of the competition will take place during the second session of the final day of the competition.
- The sides to be argued by the teams will be decided by a draw of lots prior to the commencement of the final round of competition. There shall be two rounds of arguments by the final teams.
- There shall be break after the first round of arguments. After the break, the team that argued on behalf of the prosecution in the first round will be required to argue on behalf of the defence; the team which argued on behalf of the defence in the first round will be required to argue on behalf of the prosecution during the second round of the arguments.
- Each team will be permitted to speak for a total of 20 minutes during the final round. There will be a warning bell at the end of 15 minutes and a final bell at the end of the allotted time.
- There will be extra time (5 Minutes) allotted to each team, as necessary, to respond to questions posed by judges. Each team will have three minutes for rebuttal in each round.

4. Memorials

4.1. Submission of Memorials

Each participating team shall prepare both memorials and counter memorials, in English. All teams are to submit their copies to the organisers before the deadline specified by the organising committee in its invitation letter. As a general rule this will be one week prior to the start of the Moot Court competition. Failure to do so will result in disqualification from the competition.

Four copies of each memorial and counter memorial in paper (hard copy) shall be submitted to the organising committee. During oral presentations, the participating teams should retain copies of their memorials for their personal use. The copies submitted to the organising committee will not be returned to the participants under any circumstances. There will be exchange of memorials between the teams during the competition.

All memorials shall be prepared to the following specifications:

- Memorial or counter memorial shall not be more than 25 typed pages.

- Memorials must be typed and submitted on standard A4 size paper.
- Font and size of the text of all parts of the memorial (excluding footnotes) must be the same and must be in either Times New Roman 12 or Arial 11 font size.
- The texts of all parts of each memorial must be double-spaced, with one inch margin on both sides.
- The text of footnotes and headings may be single-spaced. The font size of footnotes must be 2 points less than the text font.
- There must be double spacing between separate footnotes and between each heading and the body text of the memorial.
- Quotations of sources outside of the memorial of fifty words or more in any part of the memorial shall be block quoted and must be single-spaced.
- The table of Contents, Index of Authorities and Case Title are not included in the 25 typed pages limit.

4.2. Description of Memorials

The Memorial shall consist of the following parts:

- Table of Contents
- Index of Authorities (including corresponding page numbers)
- Statement of Jurisdiction
- Identification of Issues
- Statement of Facts
- Summary of Pleadings
- Pleadings including the Conclusion and/or Prayer for Relief.

5. Criteria for assessment

The assessment of the teams during the Moot Court competition shall be out of a maximum of 100 marks, set out as follows:

Written Memorials	30 Marks
Appreciation of Fact and Law	15 Marks
Advocacy (Arguments, Framing of Issues, expression and articulation)	30 Marks
Use of Authorities and Citations	15 Marks
General Impression and Court Manner	10 Marks

- The written memorials submitted by participating teams shall be evaluated by an expert appointed by the organising committee and marks will be awarded for them.
- These marks will be taken into consideration, along with marks awarded by judges for the teams during the oral presentation made by them, in the preliminary round of competition.

- The teams who secured the top eight positions will be selected to participate in semi-final round competition only.
- Top two teams will be selected based upon their performance on oral presentation made by them during semi-finals. The written memorial marks will not be taken into consideration to select the teams for the semi-final and final rounds of competition.
- Winners of the final round will be selected based upon their oral performance during the final round of competition, written memorial marks of the teams will not be taken into consideration to select the winners of the Henry Dunant Memorial Trophy.

6. Awards and Prizes

Awards and prizes will be awarded for the National and Regional Moot Court competitions, as follows:

- The Henry Dunant Memorial Moot Court Competition winners will be awarded a "Running Trophy", medals for the three participants of the team, and certificates.
- The Runners up team will be awarded individual medals and certificates.
- There will be a Best Advocate prize. This prize will be awarded to the participant who is judged by the organising committee to have performed best during her/his oral presentations.
- There will be a Best Memorial prize. All the memorials, which are submitted to the organising committee of the competition, will be evaluated and the best memorial will be chosen among them to award this prize.
- Each participant in the Henry Dunant Memorial Moot Court Competition will be given a certificate of participation.
- The coaches and advisers of the participating teams will not be entitled to receive any kind of certificate or award.
- Since the trophy of Henry Dunant Moot Court Competition is a "Running Trophy", it is the responsibility of the head of the institution/college/university of the winning team to ensure that the trophy is returned to the organising committee, in New Delhi, within eight months of the date of award, at the expense of the winning team's institution/college/university.

7. Miscellaneous Rules of the Competition

- Upon completion of the competition, the organising committee reserves the exclusive right to use the memorials submitted to them, as they deem appropriate.
- Participating teams should carry with them required study or reference materials for their own use during the oral rounds of competition.
- Participating teams shall be expected to maintain the proper decorum of the courtroom during the proceedings and shall conduct themselves in a manner befitting the legal profession.

- The organising committee reserves the right, at its sole discretion, to take appropriate action for any unethical, unprofessional and wrongful conduct during the entire period of the Moot Court competition.
- The organising committee's decision as regards the interpretation of these rules or any other matters related to the Moot Court competition shall be final and binding. If there is any situation, which is not covered by these rules, the decision of the organising committee shall be final.
- The organising committee reserves the right to amend, modify or repeal any of the rules if so required and as they deem appropriate. Participating teams shall receive adequate notice of any/all such amendments or modifications to the rules.
- The organising committee shall not be held responsible for any loss or non-delivery of the Memorials.

8. Rules Regarding the Judges

8. 1. Judges

- A person appointed as a Moot Court judge should be well versed in the subject of International Law, in general, and International Humanitarian Law, in particular. Judges are expected to be aware of the procedure involved in mooting and the rules.
- Judges may be selected from the following categories:
 - Academicians,
 - Legal advisers to the Government,
 - Serving or retired judges of the Supreme Court or the High Court, or
 - Senior advocates of the Supreme Court or the High Court.
- No judge will judge the same team twice during the Moot Court competition. The judges who have presided over the preliminary rounds will not judge the advanced rounds. If under exceptional circumstances, which will be determined by the organising committee, a judge from a preliminary round is required to judge at an advanced round, then he/she will not judge the team he/she has judged during the preliminary round.
- For the final round of the competition a fresh team of judges will be appointed.
- There should be a full bench of three judges for every session. It is preferable to have a full bench for all the rounds of the competition.
- No faculty advisers, team coaches or other persons directly affiliated with a team shall act as judges at any level of the competition. The organising committee (members of the ICRC and its partner organizations) shall not act as judges in any of the rounds of the competition. Students shall not serve as judges.
- The Bench Memorandum shall be distributed to the Judges for the purposes of briefing them on the legal issues addressed in the Moot Court competition. The contents of the Bench Memorandum are strictly confidential.

8. 2. Rules for the Judges

- All written memorials and oral presentations should have a minimum score.
- Judges are instructed to follow the time limit as closely as possible. Interventions from the judges are permitted at any stage of the presentations; however these interventions must be relevant to the issues and be kept to a minimum, so as not to disrupt the presentations of the participants.
- Three minutes per team should be provided for rebuttal during the semi-final and final rounds. Two minutes per team will be permitted for rebuttals during the preliminary rounds of the competition.

8. 3. Commentary by Judges

Judges in any round of the competition are encouraged to provide direct feedback to teams regarding the team's performance, at the completion of the round. In providing such feedback, Judges are cautioned to give due regard to the time limitations and the schedule of the competition as a whole.

9. Anonymity

To ensure the smooth functioning of the Moot Court and avoid any perception of bias during the competition, the organising committee has decided to maintain anonymity of the college/university/institute names throughout the competition. To ensure this the organising committee will allocate a code number to each participating team in the competition. This code is to be applied by the organising committee to the participating teams during the competition, including on their written memorials.

10. Accommodation and Travel

- The organising committee will provide accommodation and meals to members of the participating teams for the duration of the competition, where it is required.
- For the Indian National Moot Court competition and the Regional Moot Court competition, ISIL will be responsible to coordinate travel, accommodation and meals for all participating teams.
- The ICRC and its partner organisations will be responsible for coordinating all administrative arrangements, including travel, accommodation and meals, for participants in their respective national competitions.

11. Questions, Complaints and Suggestions

Any feedback concerning the organisation or conduct of the Moot Court should be directed directly to the organisers. Formal complaints or suggestions for improvement of the competition should be addressed formally, in writing, to the ICRC Regional Legal Adviser for South Asia or ISIL.

These Henry Dunant Memorial Moot Court Competition Rules and Guidelines were finalised on this the 5th day of June 2006 at New Delhi, INDIA.

ADDENDUM

Specific Rules for National Moot Court Competitions in Countries² where Number of Participating Teams is less than Eight

During the competition, if less than eight teams are participating, the preliminary round of the national competition will not be held; only the semi-final and final rounds of competition will be conducted. During these competitions, the general rules which are contained in this document will be applicable, subject to the exceptions and modifications which are prescribed below here:

- If only one team is participating:
 - There will not be a competition to select the winner. The team should, however, be required to argue before the organising committee to get acquainted with the competition procedure, court manner, advocacy skills, etc., which are specified in the rules.³
- If two teams are participating:
 - Only one round of competition will be conducted and for this the rules which are specified for the final round of competition (point 3.4 in this document) will be applicable.
- If three teams are participating:
 - The Competition will be conducted using a round-robin system. Each team will have the chance to argue against all other teams. The teams will be selected by a draw of lot to argue.
 - After assessment ⁴ of the three teams' performances, the top two teams will be selected to compete for the National Henry Dunant memorial trophy.
- If four teams are participating:
 - The general rules contained in this document for the semi-final round of competition will be applicable.
 - The performance of the four teams will be assessed, based upon the written memorial marks and the marks obtained in the oral presentations.
- If five teams are participating:
 - The first four teams will argue according to the rules contained in the semi-final rounds of competition.
 - The fifth team will be then facilitated by two teams which have already argued in the first round of arguments. These two teams will be selected by draw of

² Countries other than India.

³ Since all participating teams should get sufficient training while competing in the national competitions, the organizing committee is adopted this practice.

⁴ This will include marks obtained by the teams in the written memorials.

lots. Here, only the fifth team's performance will be taken into consideration for marking; the facilitator teams will not be marked.

- If six teams are participating:
 - General rules contained in this document for the semi-final round of competition will be applicable.
 - Teams performance will be assessed based upon their written memorial marks and the marks obtained in the oral presentations.
- If seven teams are participating:
 - The procedure adopted will be the same as that used to conduct a five team competition.

Rules and Guidelines for the Henry Dunant Memorial Regional Moot Court Competition

1. Introduction

The Regional Henry Dunant Memorial Moot Court Competition was initiated and organised by the International Committee of the Red Cross (ICRC), Regional Delegation, New Delhi, in collaboration with Indian Society of International Law (ISIL) in India during October 2005.

2. Objectives

The principal objective of the Regional Henry Dunant Memorial Moot Court Competition is to develop an increased awareness and interest in IHL amongst students and academic institutions throughout South Asia. A further objective is to use IHL to further academic excellence in the student community, and to develop their advocacy skills in an environment of friendly competition.

3. Rules for Oral Pleadings and Memorials

Rules regarding the Regional Moot Court Competition will be the same as National Henry Dunant Memorial Moot Court Competition. Refer to the rules of national competition.

Once the national competitions are concluded within their respective countries, the winning teams of the national round competitions should submit their written memorials to the ICRC New Delhi. The deadline for submission of memorials is at least one week prior to the commencement of the regional competition. Failure to do so will result in disqualification from the competition.

4. Accommodation and Travel

- For participating teams from Bangladesh, India, Iran, Nepal, Pakistan and Sri Lanka, the ICRC and its partner organisations will be responsible for coordinating all administrative arrangements, including travel, accommodation and meals, during their stay in New Delhi. Personal trips such as sightseeing trips, shopping, etc., the ICRC and its partner organisation will not be responsible.
- The participating teams from countries such as Bangladesh, Iran, Nepal, Pakistan and Sri Lanka should contact ICRC delegations in their respective countries for their travel arrangements and visa requirements.
- The ICRC Regional Delegation in New Delhi will be responsible for administration of the team representing India in the competition.

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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?