

2nd Red Cross
International Humanitarian Law (IHL) Moot (2008)

Moot Problem

Prosecutor v. General Butcher and Major General Marshall

Before the ICC under a Special Mandate

in accordance with the Security Council Resolution DEF of 3 July 2007

1. Suburbia and Megriland are two countries in the continent of Duroba, which primarily thrive on oil resources for the sustenance of their economies. Though they are neighbouring countries, the population of these countries is marked by the diversities ethnically and culturally. According to the most recent census (2005), 83 percent of the Suburbian population belongs to Rumon ethnicity and 11 percent to Delphon ethnicity. Remaining six percent belong to different minority ethnic groups. 86 percent of the Megriland population belongs to Delphon ethnicity whereas Rumons constitute nine percent of the total population. Remaining population belongs to other minority communities. Major portion of the oil resources in both the countries are located on the both sides of the international border dividing two countries. Because of their rich oil resources they also exercise considerable influence within the Organization of Petroleum Exporting Countries (OPEC). In the booming oil economy, these countries have been prospering. In course of time, Suburbia could find extra reserves of oil whereas Megriland found that its oil resources have been gradually depleting. This has become the starting point of mutual distrust between Suburbia and Megriland which later escalated into that of a major irritant causing strained relations between them.
2. Suvidesh, a province, is geographically situated in Suburbia bordering with Megriland. But the composition of the population in Suvidesh is different from the majority population inhabiting the other provinces in Suburbia. Ninety-two percent of the Delphon community in Suburbia lives in Suvidesh where as the population in other provinces is more or less homogenous. Therefore, the people of Suvidesh in many respects feel more akin to that of the people of Megriland. People living in Suvidesh were nurturing a feeling of resentment that they have been subjected to discrimination and that they have been neglected and alienated. The reasons for this feeling were not totally unfounded. Despite the fact that 97 percent of the Delphon population is literate, unemployment rate among them is high. Several surveys conducted by non-governmental research institutes found that Delphon people were under represented in government services. Though several oil wells are located in Suvidesh, people belonging to Delphon ethnicity are not adequately employed. On the other hand major business establishments in Suvidesh are owned by Rumons of Suvidesh. It is alleged that the successive governments in Suburbia went out of way to support the Rumons of Suvidesh, which helped them establish their economic domination in Suvidesh. Sensing the general mood of the people, a person by name of Mr. Butcher floated an organization in early 2006 called Suvidesh Nationalist Alliance (SNA) and stated that the objective of the organization was to liberate Suvidesh from the yoke of Suburbia. Inspired by the fiery speeches of Mr. Butcher, a

number of youngsters joined the party and at their insistence, he styled himself as General Butcher and started imparting military training in August 2006 to the enlisted youth. Guerrilla warfare techniques were also included in the training.

3. When the Government of Suburbia came to know about these activities, it put restrictions on the activities of SNA in September 2006. It arrested some members of the SNA and framed them under several charges. Finding the situation very congenial, the government of Megrisland secretly held parleys with General Butcher and encouraged him to launch a struggle for the liberation of Suvidesh. General Butcher, with the support of 1500 members of SNA started insurgency operations in October 2006. Following this other leaders of the SNA held several meetings in different parts of Suvidesh and addressed the people to support the struggle for the liberation of Suvidesh. In many places, their fiery speeches led to tensions with reports of Rumons being attacked. With a view to strengthening the structure and to making its political agenda very clear, the SNA convened a conference on 1 January 2007 of all its cadres. The conference proclaimed General Butcher as SNA's leader and announced a 12 member central committee of the SNA. The conference adopted the manifesto of the SNA. Copies of the manifesto were distributed to all the cadres along with the message of General Butcher. In his two-page message dated 31 December 2006, General Butcher explained how historically Delphons have been exploited in Suvidesh. While describing the task before the Delphons of Suvidesh, the message read as follows:

"Culturally and ethnically we Delphons need to assert ourselves and prove to our exploiters who are our enemies how historically we have been superior to them. With our intellectual and manual abilities, we are contributing to the major portion of the economy of Suburbia. Now the situation is ripe that the land of Suvidesh should remain with those who can protect it but not with those who are inferior in all respects to Delphons. We should make it very clear to the world that people of Suvidesh are potent and competent and they rule their land and do not allow inferior people to rule them. The blood that flows in our veins is much superior to others and we know the history of our opponents!! But for the cunning political ploy of Rumons, we would have been with our brethren across the border. However, it is not too late. Now it is the opportune time for us to undo the historical wrongs. Let me remind you all that we are waging this struggle not only to regain our past glory but also to assert ourselves politically and economically in the present and not to allow our opponents in future also to resurface and dominate us. Thus, I appeal to you all to eliminate all the links that Rumons have with Suvidesh' politics and economy and erase the entire stigma that is inflicted on our motherland with the dominance of Rumons. We are going to meet in our next conference only after our mission is accomplished, that is, only when we make our land free in all senses from our enemies".

4. Two days after the conference, on 3 January 2007, leaflets were circulated all over Suvidesh maligning Rumons, advising parents of Delphon community not to allow their children mingle with Rumon children and called on the Delphon people to prepare for the final blow to their opponents shortly. The leaflets also hailed the leadership of General Butcher. Posters were also pasted at public places with caricatures depicting a group of people with swords and axes chasing other group consisting also of women and children. The leaflets and posters were issued in the name of Suvidesh Nationalist Youth, which claimed to be the youth wing of the SNA.
5. On 5 January 2007, while talking to the media people at an undisclosed location, General Butcher said that SNA organisational structure did not contain any official youth wing. However, he appreciated the response of the Delphon people for the

cause of liberating Suvidesh. When asked about leaflets and posters, he said "anger of the Delphon people is being expressed in different forms. Therefore, everybody should understand the spirit behind these activities".

6. On the night of 7 January 2007 there were reports that Delphon youth went around the localities where Rumons lived carrying weapons and shouting slogans warning Rumons to flee from Suvidesh or face consequences. This continued for the next day (8 January 2007) also. However, the situation was different on the 8 January 2007 night as the Delphon youth started targeting Rumons with weapons. They took care not to allow media persons to reach the places of violence. By then many Rumon men fled fearing attacks. The next morning (9 January 2007) media reported along with interviews of victims that Delphon youths killed as many men as they could catch and physically attacked unarmed women and children. It was estimated that more than 1000 Rumons died across Suvidesh.
7. On 15 January 2007, the Government of Suburbia sent its armed forces to quell the rebellion with General Crooks as the commander of its forces. General Crooks unleashed a reign of terror in Suvidesh. With a view to quelling the rebellion, the forces went on searching every possible hide out including houses and entered into religious places where people belonging to other faith are not allowed. Many people belonging to the Delphon ethnicity, never identified themselves with the SNA, but justified at various fora the legitimacy of the demand for independent Suvidesh, were reported missing after the search by the General Crooks' forces.
8. Unable to contain the counter insurgency operations of the Government of Suburbia, on 20 January 2007, General Butcher asked the Government of Megriland to help the rebel forces and the President of Megriland readily obliged. On 1 February 2007, one battalion of armed forces under the command of Major General Marshall was sent to help the SNA in Suvidesh.
9. On 10 February 2007, forces led by General Crooks approached Lohari, the biggest town in Suvidesh and went on searching for the supporters of the SNA. Lohari town is known for its rich cultural heritage. A 14th century religious shrine Gopada is located in the southern end of the city. This shrine is entered in the list of Cultural Property under enhanced Protection under the Second Protocol to the 1954 Convention for the Protection of Cultural Property during Armed Conflict. The Gopada shrine borders on the western side with a lake with a narrow passage between the two to reach the backside of the shrine. The southern and eastern sides are covered by open space equivalent to two football courts, which is surrounded by greenery. The open space is closed completely on the eastern side by a hill, except a narrow passage between the shrine and the hill. The hill on the eastern side also covers some part of the southern side. However, there is a free passage from the open space through the greenery towards the southern end. The way to reach this open space is only through the two narrow passages from both sides of the shrine. This open space is normally used for social gatherings and political meetings. Some local leaders belonging to the political party in power in Suburbia mobilized people at the open space behind the shrine on the same evening (10 February 2007) when forces led by General Crooks entered the town of Lohari. In the huge presence of General Crooks' forces, the leaders appealed to the people not to get carried away by General Butcher and remain united in the situation of crisis. After the meeting people left from the front side of the shrine. As the dusk descended, General Crooks ordered his forces to move out of the open space from the southern side and finish quick dinner away from the shrine. Around 9.00 pm, forces led by Major General Marshall started firing from the front side of the shrine targeting the Suburbian forces. The firing continued almost for two hours. The next day (11 February 2007) there was extensive coverage by the media of the

incident, which reported that more than forty percent of the shrine, mainly on the front side was destroyed. Major General Marshall issued a statement saying that their main target was Suburbian forces but not the shrine and found fault with them for hiding behind the shrine.

10. On 12 February 2007, the Government of Suburbia protested stating that these actions constituted interference in the internal affairs of Suburbia. On 13 February 2007, Megriland rejected the objection stating that it was forced to send its forces as there was tremendous economic pressure on it due to the influx of refugees from Suburbia to Megriland. Megriland said that in spite of repeated appeals by it to the state of Suburbia to take measures to stop the ongoing conflict situation in Suvidesh, the government of Suburbia has not been able to do so. In fact, Megriland noted, Suburbia even denied the existence of any conflict situation in Suvidesh.
11. At this juncture, on 15 February 2007, General Butcher, having managed to capture a large part of the land in Suvidesh, declared that part independent, called it New Suvidesh and hoisted its own national flag. On 18 February 2007, Megriland recognized New Suvidesh. The Government of Suburbia sensing the urgency, on 20 February 2007, launched a grand incursion across the border into Megriland in pursuit of some separatist Suvidesh rebels belonging to General Butcher's contingent. This escalated the conflict in New Suvidesh.
12. There was then, beginning on 25 February 2007, fierce fighting in New Suvidesh between the forces of Government of Suburbia on the one hand led by General Crooks and the members of SNA and the armed forces of Megriland led by General Butcher and Major General Marshall respectively, on the other. There were allegations and counter-allegations of causing unnecessary suffering to civilians, destroying places of religious worship etc. There was cross-firing across the border between the forces of Suburbia and the forces of Megriland led by Major General Marshall. During this period, on the morning of 14 March 2007, people living on the border in Suburbia found flames high into the sky from the oil wells on the Suburbian side. By afternoon, it was reported by the electronic media that large number of people living in near by villages were also killed in the previous night shelling. On the same evening (14 March 2007), the Minister of Oil Resources of Suburbia issued a statement blaming the forces of Megriland for deliberately targeting and shelling on oil fields, which caught fire. He further stated that forces led by Major General Marshall were well aware of the location of these oil fields. Major General Marshall replied that there was an unprovoked firing from Suburbian forces, against which they retaliated. However, he did not refute the allegation that they knew the location of oil fields. The fire continued for several days before they were put out by expert fire fighters engaged with the help of Organization of Petroleum Exporting Countries (OPEC) and the United Nations Environment Programme (UNEP). Environmental experts from Greenpeace and other non-governmental organizations came out with preliminary reports predicting the long-term impact of the fire on the environment in the area covering both Suburbia and Megriland. Several experts in their interviews to the media expressed similar concerns. UNEP has constituted a committee of experts to go into the incident. Though the report of the committee is yet to be released, the committee members in their interviews to the media during the investigation expressed similar concerns.
13. International media has extensively reported the volatile situation in the conflict area. Several human rights organizations have also brought out reports of human rights violations and the utter disrespect shown by the parties to the conflict towards their humanitarian law obligations. Meanwhile, two days after the oil wells fire (16 March 2007), a makeshift military base of the Suburbian forces in Suvidesh, at a location

near the Megriland border, caught fire at night resulting in the heavy explosion due to ammunitions. As the private media was not allowed to the location due to security reasons, official Suburbian radio was the only source of information, which initially reported that eight soldiers were killed in the fire. However, a day after, the Minister of Defence of Suburbia informed in a press meet that along with 78 soldiers Gen.Crooks was also killed in the fire. The minister also announced the name of the new General, Gen. Williams who would lead the Suburbian forces.

14. Keeping in view the impact of the situation on the maintenance of international peace and security, the United Nations Security Council, on 24 March 2007, passed a resolution under Chapter VI of the UN Charter urging both Suburbia and Megriland to settle the dispute through peaceful means.
15. Nothing came out of the above resolution and the situation further deteriorated. Sensing the strategic importance of the region and the need to put a stop to the hostilities, an emergency meeting of the Security Council was convened. The Security Council having determined that the crisis in Suburbia was assuming alarming proportions and was a real threat to international peace and security resolved to send UN-hatted forces into Suburbia invoking its powers under Chapter VII of the U.N. Charter. The forces were given the mandate to restore peace and security through "any means necessary" (Resolution ABC of 1 April 2007). There was further escalation in the intensity of the conflict. The U.N. Security Council was again convened and at an emergency meeting a Resolution was passed (Resolution DEF of 3 July 2007) where all the parties were called upon to put an end the hostilities immediately. The parties relented at the ultimatum and put an end to the hostilities.
16. The Security Council ordered that the Parties accept the jurisdiction of the ICC Statute, but added that an additional crime of any violation of the 1949 Geneva Conventions and the 1977 Additional Protocols (to which both States are parties) would be added to the crimes which it was to investigate. The Parties, the defendants and the ICC have all accepted this enlarged mandate.
17. For the purpose of present case, the ICC prosecutor has framed charges against General Butcher and Major General Marshall as follows:
 - 1) General Butcher for the incidents in 2006 up to 8 January 2007, under ICC Statute.
 - 2) Major General Marshall, for damage to cultural property for the incidents of 10 February 2007 and crimes related to the environment for the incidents of 13 to 15 March, under the ICC and under the Geneva Conventions and the Additional Protocols.
19. Counsel for the prosecution shall prepare the brief based on the given facts, with specific charges against the each accused. The counsel for the accused shall prepare the brief against each charge made by the prosecution.

The following points are to be noted:

- The facts are neither disputable nor can they be changed.
- The issues of jurisdiction, evidence and procedure need not be raised.