

7th Red Cross International Humanitarian Law Moot (2009)

The Moot Problem

1. Background Information

1.1; RELEVANT PARTIES, PLACES AND THINGS:

Republic of Eden – was a collection of small states and provinces amalgamated in 1945 into the Republic of Eden by General Brown who subsequently ruled Eden as Dictator until his death in 1997. Internationally the Republic of Eden held significant strategic importance because the northern part held large oil and gas reserves while the Republic also occupied territory that straddled major trade routes. One effect of General Browns rule was the suppression of long established animosity and rivalry between the different ethnic groups that had occupied the territory for millennia. Upon the death of General Brown his son assumed control but lacking the ruthlessness of his father was unable to stop the increasing violence between ethnic groups.

Cainite - one of the Northern provinces that made up the Republic of Eden. Cainite declared itself an independent state. It has large oil and gas reserves and its population was majority Cainites.

Berbia – another former province of the Republic of Eden declaring itself an independent state. Berbia adjoins Cainite. The population of Berbia is largely ethnic Berbians.

Sena – a small province in the Republic of Eden occupied equally by Cainites and Berbians. Sena has strategic importance because of its deepwater port called Seatown.

Pace – an inland province of the Republic of Eden that declares itself independent state.

Seatown – a deepwater port suitable for very large oil and gas tankers.

Appletown – a city of some 50,000 people that straddles the Cainite – Berbia border. Appletown is predominately occupied by Cainites.

Maintown – a university town located in Cainite.

Green Mountains – a rugged mountain range that runs down one side of Cainite and Berbia and overlooks Appletown.

Cainites – an ethnic group.

Berbians - an ethnic group.

Professor Gee – an academic.

General Adams – the leader of Cainite Revolutionary Army formed from soldiers of the former Republic of Eden Armed forces.

Cainite Revolutionary Army – the Cainite Revolutionary Army lead by General Able. These soldiers were largely Cainites.

Cainite Volunteers – the Cainite Volunteers, a group of Cainites who formed to support the values of the Cainite Democratic Party. They could on occasions be identified by a cap embossed with skull and crossbones.

Mordor - a superpower and a permanent member of the United Nations Security Council.

Dr Paul – Mordors foreign minister.

Sue Lee – reporter for the Eden Times, the national newspaper for the Republic of Eden. Its head office and printing presses were located in Maintown.

Bill Headline – famous freelance international war correspondent.

Mary and Kim – local volunteer Red Cross workers.

Red Cross and Red Crescent Emblems - these are symbols recognized and protected by international humanitarian law. The Red Cross and Red Crescent emblems are placed against white backgrounds and have come to represent the impartial humanitarian assistance provided to those who suffer. The provisions of the Geneva Conventions and the Additional Protocols establish that the Red Cross and Red Crescent emblems are symbols protected by international law.

Red Crystal Emblem – The International Red Cross and Red Crescent Movement, as well as States, now have three protective emblems recognised under international law. A diplomatic conference in December 2005 adopted the Third Additional Protocol to the Geneva Conventions, creating the red crystal emblem to stand alongside the Red Cross and Red Crescent. The Protocol entered into force on 14 January 2007.

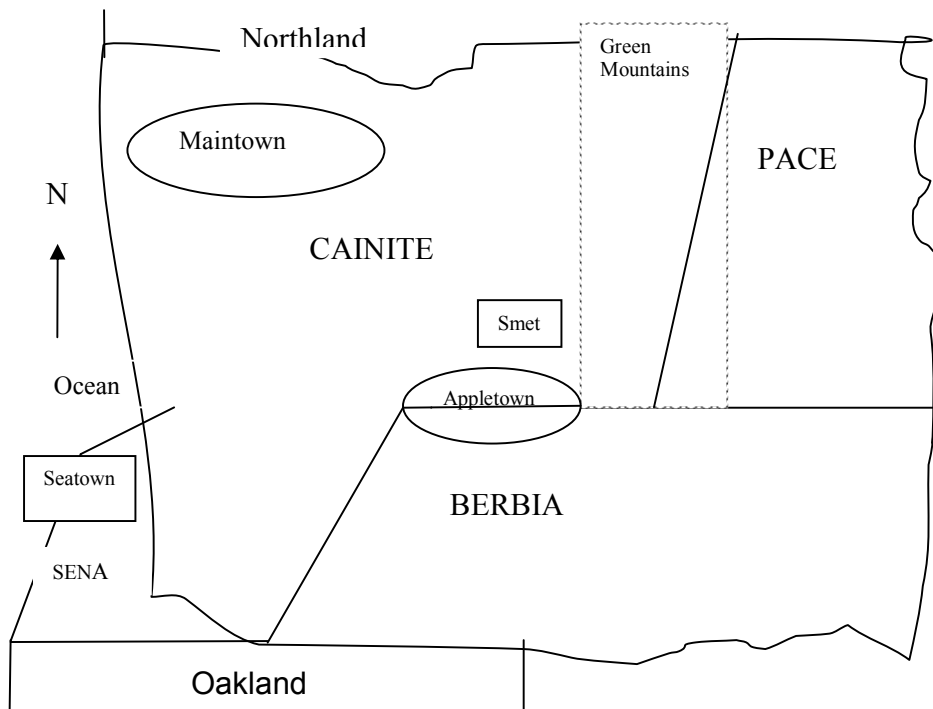
1.2; Teams should concentrate on the facts supplied. All characters, countries, cities, companies, armies, tribes, ethnic groups and religions are fictitious and any resemblance to real persons, countries, cities, companies, armies, tribes, ethnic groups and religions, living or dead, is purely coincidental. Jurisdiction may be an issue. State responsibility may be an issue. Teams may be assisted by looking at matters before the International Criminal Tribunals of Yugoslavia and Rwanda, the International Criminal Court and its predecessors as well as decisions by national courts. If teams are going to rely on decisions by national courts these decisions should be leading decisions and teams should expect to be asked for copies of the head note and the portion of the transcript or judgment referred to in argument. It would be advisable to have copies available for all judges in the moot in which the team is competing.

1.3; Teams may find within the problem facts that raise issues other than International Humanitarian Law issues. For example, procedural issues. While teams may consider these 'other issues' important and requiring comment teams should concentrate on International Humanitarian Law issues.

1.4; Teams acting for the Prosecution will be known as the Applicant. Teams acting for the Accused, Professor Gee, will be known as the Respondent.

1.5; The following map shows the location of the States, towns and key features. The States of Cainite, Pace, Berbia and Sena made up the Republic of Eden. Northland and Oakland are States to the north and south respectively:

Map not drawn to scale.



1.6; Prior to the Second World War the entities that subsequently made-up the Republic of Eden had existed as a collection of independent states. These states were formed around different ethnic groups or tribes. The tribes had a long history, especially the Cainite and Berbians tribes. Historically, these tribes had been at war on and off for centuries with the Cainite tribe being the dominant rulers. Successive wars and economic circumstances had over time lead to the formation of three independent states. These states were called Cainite, Berbia and Pace. The two largest ethnic groups lived in Cainite and Berbia respectively. Cainite was mostly populated by Cainites. In Berbia, the Cainites were a large minority while in Pace, Cainites, Berbians and other smaller tribes each represented about a third of the population. In Pace ethnic groups and religions had co-existed peacefully for centuries.

1.7; During the Second World War these states were occupied by the armed forces of a foreign state. General Brown led the largest guerilla army that resisted

the occupation. When the Second World War ended, General Brown was asked to lead all the states till they had recovered from the destruction caused by the war. General Brown took control but stayed on as dictator with the support of his army. General Brown formed the Republic of Eden by amalgamating the former independent states. To ensure the Republic succeeded General Brown crushed any promotion of ethnic superiority or promotion on the basis of ethnicity. He also formed the new province of Sena as another means of breaking down ethnic and tribal concentrations. Forced migration of people into other provinces, new provinces and key cities was also used as a means of breaking down historic ethnic enmity.

1.8; Professor Gee; a Cainite, was an academic who had lived and studied in the university city of Maintown in the northern province of Cainite. He was extensively published and considered a radical for his views on ethnic purity and the need to promote Cainite nationalism. In particular he was dedicated to the 'rebirth' of what he termed 'The Greater Cainite Republic'. Professor Gee was encouraged to go into politics in the early 1990's. He was eventually arrested in 1995 and imprisoned by General Brown for public speeches and articles promoting 'unrest' and 'dissent' in the Republic. Professor Gee continued to work to help set up the Cainite Democratic Party which was well established at the time of General Brown's death. Professor Gee refused to take on a leadership role saying on many occasions:

"I am no leader; I'm a thinker, an academic, a philosopher, not someone who leads like a president or general. I am a follower."

In his speeches Professor Gee encouraged young men and women to join the Cainite Democratic Party. He was regularly reported as saying:

"The Cainite Democratic Party needs active young people. Young people have energy, the energy that is needed to enforce the policies of the party. We need this energy to bring back the glory, drive out the unfit, and seize the lands that belong to The Greater Cainite Republic."

1.9; Sena was one of the new provinces originally established by General Brown. Its main city was Seatown famous for its large deepwater port and heavy industry. It was historically populated mostly by Cainites. After the Second World War General Brown had expanded the industrial base and to dilute the Cainite majority forced thousands of Berbians into Sena and Seatown. Over four decades the forced migration policy had diluted the Cainite majority to about fifty percent of the population.

1.10; General Brown also turned the small town of Appletown into a small industrial city by investment and encouraged more Berbians to work in the cities industries. In both Sena and Appletown Cainites protested the movement of another ethnic group into what they said was historic Cainite territory.

1.11; In 1997 General Brown died. General Brown's son, General Brown Junior assumed control of the Republic of Eden. In an attempt to capture the support of Cainite nationalism he released Professor Gee from prison. However, over the next two years civil unrest against the rule of General Brown Junior increased with provinces like Cainite seeking independence. The demonstrations highlighted historical ethnic differences especially between the Cainites and Berbians with crowds protesting against the inclusive rule of General Brown Junior and increasingly attacking ethnic minorities in their provinces who were being blamed for policies of the Republic. General Brown Junior used the army to impose emergency rule but the protests increased. The state of Cainite was the most active in seeking independence. The protesters encouraged Cainites in other states to protest. They also threatened non-Cainites living in Cainite and Sena. Some young Cainites formed an active youth league and called themselves 'Cainite Volunteers' and their motto was 'Cainite for Cainites'. Many of their more vocal members were arrested and imprisoned for treason and sedition. Court transcripts linked the Cainite Volunteers to the Cainite Democratic Party. Following the arrests the Cainite Volunteers and the Cainite Democratic Party went into hiding and the protests and violence stopped.

1.12; On 5 October 1998 the Republic of Eden signed the Rome Statute.

1.13; On 15 November 1999 the Eden Times, the national newspaper of the Republic of Eden, reported a resurgence of the violence against non-Cainites living in Maintown. These attacks were mainly against Berbians who had moved to Maintown to work in the petro-chemical industries and oil refineries. The Eden Times reported that the attacks included physical bashing of Berbians, burning down of their homes and the appearance of posters threatening them with harm if they did not leave Cainite. In Appletown ten (10) Berbians were killed. On 20 November 1999 Eden Times reporter Sue Lee, interviewed Professor Gee and the following exchange took place:

Sue Lee: "Is the Cainite Democratic Party supporting these attacks against Berbians in Cainite"?

Prof Gee: "Why do you ask me these questions, you know I am not the leader of the Cainite Democratic Party. However, I am not surprised by these attacks. Cainite should be for Cainites, the wealth of Cainite should be for the true citizens of Cainite, not outsiders."

Sue Lee: "But I have heard stories that say you are the leader of the Cainite Democratic Party and a sponsor of the Cainite Volunteers. Do you support the actions of the Cainite Volunteers who are alleged to have attacked Berbians, is this true"?

Prof Gee: "I am no leader. I am not a member of the Cainite Volunteers. These are stories said by people who do not accept the historical rights of the Cainite people".

Sue Lee: "Is it true you also seek the assimilation of Sena into Cainite"?

Prof Gee: "Up to 1946 Sena was part of Cainite. History says Sena is part of Cainite."

1.14; Between April and June 2000 Professor Gee and other proponents of ethnic based nationalism and independence were arrested, put on trial, convicted and imprisoned.

1.15; On 9 July 2000 the Republic of Eden ratified the Rome Statute.

1.16; During November and December 2000 incidents of ethnic violence became increasingly widespread. One of the biggest incidents of violence took place when a large armed group of Berbians marched from Berbia across lower Cainite towards Sena to revenge the killing of fifty Berbians when their Berbian church was burned down with men, women and children inside. The Berbian group was surrounded by a larger force of armed Cainite Volunteers who at this stage were freely roaming the countryside. Soldiers lead by General Able arrived before any fighting. In the resultant killing spree the army did not intervene. A young boy who was covered by dead bodies and subsequently escaped reported that the soldiers did not stop the shooting and the man in charge of the soldiers said 'make sure there is no-one alive to report'.

1.17; On Christmas Eve, 2000 General Brown Junior ordered the army to stop the violence. By early January 2001 several senior army officers told General Brown Junior that the army was splitting into ethnic groups and deserting with their equipment to ethnic homelands, particularly into Cainite and Berbia. They expected civil war between Cainite and Berbia to settle historical grievances and to gain control of key resources like the industry in Appletown and the province of Sena with its deepwater port and heavy industry.

1.18; In Cainite, General Adams formed the Cainite Revolutionary Army. One of its first acts was to free Professor Gee. General Adams asked Professor Gee to be President of Cainite. Professor Gee refused to be president but said he would speak at any rallies in support of Cainite nationalism and he recommended John Dolittle, a factory manager and founding member of the Cainite Democratic Party, as president. On 10 January 2001 Professor Gee spoke with President Dolittle at a large rally in the main square in Maintown. In that speech Professor Gee said, amongst other things,

“...The time has come for Cainite nationalism to rise again. Anybody who stands in our way should be warned that Cainite and Sena are the traditional lands of the Cainites. We have an undeniable historical claim to these lands – these are our lands...anybody who stands in our way must be crushed... we have great leaders in President Dolittle and General Adams...”

1.19; On 11 January 2001 General Brown Junior fled the country as civil wars raged throughout the Republic of Eden in the provinces of Cainite, Berbia and Sena.

2. The Case

2.1; Refugees fled into the province of Pace and into surrounding States. In the north some 20 armed men being pursued by the Cainite Revolutionary Army were pursued across the border into Northland and killed. Northland issued a warning to authorities in the Republic of Eden that it would not tolerate unauthorized invasion of its territorial sovereignty. Notwithstanding this warning refugees continued fleeing across borders into Northland and Oakland. Reports of human rights abuses including allegations of ethnic cleansing appeared in the international media. Surrounding States fearing a humanitarian crisis, potential unrest amongst their citizens, continual violations of territorial sovereignty and potential economic disturbance urged intervention by the United Nations Security Council.

2.2; After much debate the United Nations Security Council passed Resolution 9999 (2001) adopted by the Security Council at its 29991 meeting, on 1 July 2001. This resolution contained, amongst other things:

Determining that the situation in the Republic of Eden constitutes a threat to international peace and security.

Reminds all parties to the conflict of the Geneva Conventions and the role of the International Criminal Court in investigating and prosecuting serious breaches of international humanitarian law.

Encourages all parties to the conflict to cease fighting.

Decides to remain seized of the matter.

2.3; On 29 July 2001, after much fighting, the provinces of Cainite and Berbia declared themselves independent states. These declarations were quickly followed by a declaration of independence by the province of Pace. Both Cainite and Berbian governments claimed control of the province of Sena where the fighting continued. On 1 August 2001 Pace announced that it would comply with all treaties and conventions entered into by the former Republic of Eden. Professor Gee travelled the country with a team of supporters giving speeches to Cainite troops and holding regular meetings with General Adams and President Dolittle.

2.4; By 6 August 2001 Berbian troops had started to occupy Appletown. These troops tried to force all Cainites to leave the city as they advanced. Many Cainites were shot. By evening on 8 August 2001 there was increasing Cainite armed resistance. The Cainite Volunteers joined the street fighting. Professor Gee visited Appletown. He was photographed speaking to the local Cainite Volunteer leader. The caption under the photograph in the Cainite Times stated 'Professor Gee encourages Cainite Volunteers in the fight against Berbian genocide and ethnic cleansing'.

2.5; By midday on 10 August 2003 Cainite Volunteers had occupied the main market square in Appletown. To the west of Appletown the Cainite Revolutionary Army were fighting Berbian armed forces while General Adams was moving more Cainite troops towards Appletown.

2.6; In Appletown the local Red Cross had an office and blood collection centre in a large house that was beside the marketplace in the centre of the city. There was a large sign across the front of the building with the words 'Red Cross Blood Collection Centre'. Local Red Cross volunteer workers Mary and Kim operated the office and organized nurses and doctors on a roster to collect blood on market days. When the fighting started Mary and John set up a first aid clinic in the basement of the Red Cross building. They also hung flags containing the Red Cross emblem from upstairs windows. At 1pm on 10 August 2003 Professor Gee visited the main square in Appletown. On the way to the square Professor Gee came across injured Cainites who told him the Berbian army was not taking any prisoners and was shooting on sight anybody carrying a weapon and not in the uniform of the Berbian army. Professor Gee with several armed Cainite Volunteers entered the Red Cross building and asked to speak to the person in charge. The following conversation took place:

Professor Gee: "Who is in charge here?"

Mary: "I am in charge, my name is Mary and this is Kim. We are Red Cross workers as you can see from our vests. Are you or your men injured?"

Professor Gee: "No, but what is going on here? Why are you treating Berbian soldiers? Why are Berbian scum lying next to Cainite heroes?"

Mary: "The Red Cross does not distinguish between combatants. We treat anybody who needs medical assistance. Everyone in here has been injured in the fighting. We have soldiers and civilians, including some children."

Professor Gee “This is not satisfactory. It will be best if the Berbian soldiers come with us. They are prisoners and should be held in a prisoner of war camp. We do not want them killing any more Cainites do we?”

Mary: “They are unarmed; anyone seeking treatment here has to have no weapons. Their friends take their weapons away when they leave them. Most are badly injured and will have trouble moving without a vehicle. They should stay here till they have received further treatment. We have doctors visiting daily and they will decide who is fit to be moved”.

Professor Gee: “It is decided. The Berbians come with us now! They can support each other.”

Suddenly, a Cainite Volunteer ran into the clinic shouting “Professor! Berbian soldiers have counter-attacked and are heading towards the square, we have to get away, it may already be too late. Professor you must escape.” Shooting could be heard getting closer.

2.7; Professor Gee said:

“Get a Red Cross flag and some stretchers. Find the wounded Cainites and put those you can on the stretchers. We will take them with us. Mary here will help us get them to safety, won’t you? We can use your truck outside can’t we Mary?”

Pointing at Kim, Professor Gee said:

“Give me your vest. I have always wanted to be a Red Cross worker, I will wear your vest and I will stand beside Mary at the back of the truck where we can be seen. You will come and treat the injured won’t you Mary?”

Mary: “Yes”.

Professor Gee: “We will lead head north towards General Adams forces. One of you waves the Red Cross flag. If we are stopped Mary will tell the Berbian army that we taking seriously injured civilians to a doctor. No-one will shoot at us when they see the Red Cross flag and Mary. Mary, make sure you have some painkillers and antibiotics for the injured. Let’s go now.”

By 11 August, 2003 Professor Gee reached the forces of General Adams. In the initial conversation the following exchange took place in front of Mary.

General Adams: “You were lucky to get here. The Berbians have some fighter planes that we have not been able to destroy which is a real worry.”

Professor Gee: “Yes, we know but we had the Red Cross. Here keep the Red Cross flag and Mary till this fighting is over. Fly the flag from your tent and I’m sure Mary will be more than happy to treat your injured. Anyway, I have told you several times you need a military aid unit with your forces. With the Red Cross flag any Berbian aircraft will think your tent is a hospital.”

2.8; By 14 August, 2003 the Berbian army had seized control of Appletown. In the meantime Cainite and Berbian armed forces had reached a stalemate in Sena with each holding about half of Sena. General Adams withdrew some of his forces into the Green Mountains overlooking Appletown. The United Nations Security Council called upon all parties to the fighting to cease fighting and the Secretary-General of the United Nations called the leaders of Berbia and Cainite to a meeting. President Doolittle attended the meeting along with the President of Berbia. Fighting between Cainite and Berbian armed forces reduced to occasional skirmishes. In Pace there had been occasional border skirmishes between Cainite Volunteers and Pace forces. Overall, the citizens of Pace did not take up either the Cainite or the Berbian calls of nationalism and ethnic superiority.

2.9; In the adjoining states of Northland and Oakland refugee camps had been established to care for persons escaping the violence. Red Cross workers reported most of the refugees were women, children and elderly persons many suffering malnutrition and exhibiting injuries.

2.10; The meeting between the leaders of Cainite and Berbia with the United Nations Secretary-General took place on 18 August, 2003. Both sides agreed to a cease-fire. Following the meeting civilians who had fled the fighting started returning to their homes in Cainite and Berbia.

2.11; The ceasefire resulted in several demonstrations in Maintown protesting the Berbian occupation of Appletown. On 1 September 2003 the new Berbian government seeking to demonstrate its independence and commitment to peace announced on the radio and television and wrote to the Secretary-General of the United Nations that it would be ratifying all the treaties and conventions originally entered into by the former Republic of Eden. Shortly afterwards President Dolittle announced at a public rally in Maintown that Cainite was repudiating all treaties and conventions entered into by the Republic of Eden. President Dolittle went onto announce that Cainite would be renegotiating treaties when all lands

rightfully belonging to Cainite had been returned to Cainite and the region was stable.

2.12; The Eden Times edition of 20 September 2003 carried a front page banner:

‘The Professor Speaks’.

And a feature article by Professor Gee titled:

‘Remove the stain’.

The article said amongst other things; ‘I am the conscience of Cainite...The unlawful Berbians occupation of Appletown is a stain that must be removed at all costs...Appletown is part of the cultural heritage of Cainite...Cainite can never be whole without Appletown...the Berbians must be driven out of Cainite...Berbians must be quashed like cockroaches...I have meet with President Doolittle and General Adams...They know what has to be done...all loyal Cainites call on the army to do its duty for the people of Cainite...’. At the same time international media outlets were reporting rumours that bands of young men and women calling themselves Cainite Volunteers and wearing caps with skull and crossbones were roaming the Cainite countryside forcing Berbians out of their homes and killing Berbians who resisted.

2.13; On 23 September 2003 President Doolittle demanded Berbia withdraw all troops and Berbians from Appletown by 30 September 2003. The Berbian Government replied “Appletown has historically been occupied by both Cainites and Berbians. We will allow those Cainites who have property and business interests in Appletown to return. They will be safe”.

2.14; Professor Gee along with a small group of supporters visited the Cainite army in the mountains west of Appletown. Professor Gee meet with General Adams and his senior commanders. On 2 October 2003 Professor Gee addressed the Cainite troops. Professor Gee said (amongst other things):

“You are the sons of Cainite, the chosen ones, the future of Cainite...it is your sacred duty to cleanse the lands of Cainite, to remove the stain of Berbia...drive the Berbians out of Cainite...”

2.15; At 9am on the morning of 3 October 2003 Cainite artillery, which occupied the mountains to the east of Appletown, opened fire on the historic centre of Appletown concentrating on the main square in which the daily markets were operating. The markets were filled with many civilians, mostly Berbians. Many people were killed and wounded.

2.16; Snipers in Appletown began shooting at any person who did not look like a Cainite and who tried to move across the square or on any of the main access

roads to the square. Local citizens reported that snipers wore a cap embossed with skull and crossbones. Posters started appearing on prominent walls urging local Cainite men to join the Cainite Volunteers to support the establishment of a 'Greater Cainite Republic'.

2.17; In Sena fighting started again between Cainite and Berbian forces.

2.18; On 10 October, 2003 Professor Gee and some thirty supporters approached the village of Smet. Smet was occupied by Cainites and Berbians. It was about 10 kilometers north of Appletown. The 500 villagers were told to assemble in the village square to hear a talk by Professor Gee. Professor Gee announced:

"People of Smet, those of you who are Berbian are in serious danger and I tell you the Cainite Volunteers will be here soon. I want to help you, to save you. My guards and I will take you through the Green Mountains and across the border into the Republic of Pace. My guards are armed but do not worry. They are to protect me and you from danger. You must leave immediately."

The Berbian villagers cried out:

"This is a trick to get us out of our homes. You want our houses and land. Even if we wanted to leave we need to get warm clothes, the mountain passes are very cold especially at night and we will need food."

The other villagers said:

"These are our friends; we have lived peacefully for decades".

Professor Gee said:

"I know and that is why I am here to help. It is too dangerous for the Berbians to stay. They will have to leave now. My friends will allow one person from each family 15 minutes to collect warm clothes and some food for the trip. You will not need much because we had trucks for part of the journey and we will show you the way. When the fighting is over everyone can come back. It will be safe. We will make sure everybody is safe in the mountains".

Berbian villagers:

"But you are armed, this is a trick".

Professor Gee:

“My friends are armed because these are dangerous times. They are armed to protect me and will protect you from robbers and because they are armed, Cainite Volunteers will leave us alone, now we leave, onto these trucks which will take us to the start of the trail over the mountains”.

Some 250 men, women and children of Berbian background were loaded onto ten trucks. Each truck had an armed driver and two armed members of Professor Gee’s group. They all drove west into the Highlands. Professor Gee rode in the first truck beside the driver.

2.19; On 15 October, 2003 the Eden Times reported a speech by Professor Gee to a political rally in support of the Cainite Volunteers. Professor Gee was reported as saying,

“...the fight to establish the Greater Cainite Republic goes well. The Cainite Army and the Cainite Volunteers should soon have control of Appletown. This will protect our southern border from any future aggression. The army will soon be able to help you Cainite Volunteers in the fight to bring Sena back into the Motherland...”

The paper also carried a photograph of Professor Gee talking to General Adams and some of General Adams staff in the mountains above Appletown. The photograph was dated 11 October, 2003.

2.20; Refugees from Cainite reported rounding up of non-Cainite persons, especially Berbians. In most cases refugees reported the separation of men and women. There were unconfirmed reports of ethnic cleansing, widespread rape and destruction and confiscation of property not belonging to Cainites.

2.21; The United Nations Security Council on 1 November 2003 debated the situation in the former Republic of Eden. The Security Council called for the parties to cease fighting. No resolutions were tabled. Bill Headline wrote that the United Nations Security Council was failing its duty to protect people from gross violations of international humanitarian law.

2.22; In Pace, women and children from the village of Smet protested to Pace authorities about the whereabouts of their men and teenage sons. They spoke to a senior local official.

Women: “We are very worried about our husbands and sons, can you help us”

Official: “When did you last see them?”

Women: “We last saw them about an hour after leaving Smet. It was very frightening. About thirty (30) minutes after leaving Smet we stopped at a road

junction where there were some Cainite soldiers. We thought we were all going to die after what the Professor had told us. But nothing happened. The Professor spoke to some of his men. One woman said she heard Professor Gee say to the Cainite Volunteers “you know the place, remember no mistakes” before he left. We drove into the mountains and when the trucks reached a long, steep, winding incline on the mountain road we stopped and most of the armed men and our husbands and sons were asked to get out of the trucks and walk behind because the road was too steep for the trucks. But when the trucks reached the top of the mountain some 40 minutes later the trucks did not wait and kept driving for several hours. We were told it was better if we kept moving as night was falling and it was better for us if we reached the mountain pass that lead down into Pace. When we got to the pass it was dark and very cold. We were told to leave the trucks and walk down the road to the next town which we did because they pointed their rifles at us. They said our men would soon catch up.”

Official: “We cannot do much. It is too dangerous for our police and soldiers to go into the Highlands. We do not want to become involved in the fighting. So far the fighting in the former Republic of Eden had not reached Pace and we do not want to provoke any fighting.”

Women: “What are we to do, how are we going to survive.”

Official: “We have asked the Red Cross to help. They will also help with finding your men.”

The Case: The End of the Conflict

2.23; On 15 November 2003 a coalition of neighboring states (CONS) fearful the violence would destabilize the region and concerned about the reported gross breaches of international humanitarian law launched aerial bombardments against Cainite forces. One immediate effect of the aerial bombardment was the stopping of the artillery shelling of Appletown.

2.24; After a week of aerial bombardments CONS forces moved into Cainite from the north and with an amphibious landing in Sena in the west. Berbia allowed CONS forces access to Berbian territory. Maintown was overrun by CONS forces on 30 November 2003. CONS soldiers found several warehouses that were being used as concentration camps. In these concentration camps were Berbian women, children and elderly persons who had been detained in these facilities for periods of up to a year. They were starving and some women reported being raped regularly by their Cainite Volunteer guards.

2.25; CONS forces also found other camps in the countryside mostly containing Berbian women, children and elderly persons who had been detained in these facilities for periods of up to a year. These forces also came across villages in which property occupied by those of Berbian background was either destroyed or

occupied by Cainites. In some areas CONS forces were directed to isolated fields in which they found mass graves containing the bodies of men and boys. Subsequent investigations revealed many had been shot in the back of the head. In one of the graves a cap embossed with skull and crossbones was found.

2.26; On 5 December 2003 a meeting took place between Professor Gee, General Adams, President Doolittle, senior officers of CONS and Mordors foreign minister Dr Paul. The meeting lasted all day. The meeting was arranged to set an agenda for the future maintenance of peace and security in the former Republic of Eden. During the day Professor Gee and Dr Paul spoke privately. At the conclusion of the meeting Dr Paul announced the parties could not agree on a plan.

2.27; After the fighting ended CONS removed most of its armed forces leaving peacekeeping forces made up of military and police services. The CONS peacekeeping forces allowed an interim government in Cainite on condition it did not employ any persons who were involved in alleged breaches of international humanitarian law during the fighting.

2.28; In Cainite, Professor Gee and General Adams went into hiding. President Doolittle was arrested by CONS peacekeeping forces on 1 May 2004 and sent to The Hague.

2.29; CONS announced its search for General Adams and Professor Gee were unsuccessful. Democratic elections were held in Cainite on 1 January 2005.

2.30; On 1 August 2007 a group of bushwalkers from the Republic of Pace walking on the Pace side of the border in the Green Mountains found a skeleton part way down the side of a deep ravine. The ravine was at the edge of a large clearing through which the mountain road passed. On closer examination the skeletons of some 100 men and teenage boys were discovered. Forensic examination showed the men and teenage boys had all been shot. Further examination of clothing and other personal effects identified the skeletons as belonging to former residents of Smet.

2.31; International human rights organisations called for an intensification of the search for General Adams and Professor Gee so that they could be put on trial for war crimes and crimes against humanity. Despite much publicity General Adams and Professor Gee were not located.

2.32; At an undisclosed location in Maintown on 1 September 2007 Bill Headline interviewed Professor Gee for a special newspaper article on 'What went wrong in Eden'. In the interview the following exchange took place:

Bill Headline: "Professor, do you accept that you are seen as the real leader of the Cainite armed forces during the conflict?"

Professor Gee: “That is nonsense. I have always refused to take any government or military leadership positions. I am an academic who only provided advice when asked. I never took an active role in any fighting. True, I have always forcefully stated my views on the superiority of the Cainite cause and the need for a Greater Cainite Republic and I will continue to do so. In the end we will win. Time is on our side.”

Bill Headline: “You are accused of being involved in the deaths of about 100 men and boys from the village of Smet whose bodies have just been found, what do you say about that?”

Professor Gee: “Propaganda by those who want to stop the return of the Greater Cainite Republic”.

Bill Headline: “But Professor, if you have done nothing wrong why are you still in hiding. Why do you not hand yourself up to the authorities?”

Professor Gee: “I have an agreement with Mordor. Dr Paul and I agreed that if I went into hiding I would have immunity from any prosecution by any international court for anything that may have occurred during the fighting and Mordor would not try and find me. That is why I am in hiding. They are a superpower, they are a permanent member of the Security Council and so far I have kept my side of the agreement and I have not been found which indicate they are keeping their side of the agreement. I am enjoying my new life, no-one recognizes me which is why you were bought here secretly and you have not seen my face.”

Several days later Bill Headline travelled to Appletown and interviewed Mary. In the interview the following exchange took place:

Bill Headline: “Why did you go with Professor Gee on 10 August 2003”?

Mary: “I was scared. Everybody knew who Professor Gee was; I have seen reports of his speeches. They had guns; I did not think I had a choice. I also thought nothing would happen to the soldiers if I went with them. Some of the soldiers were very badly injured.”

Bill Headline then travelled to Mordor to interview Dr Paul. Upon arriving in Mordor Bill Headline was told Dr Paul had suffered a heart attack and died.

2.33; On 12 September 2007 a police raid on a nightclub in the capital city of Pace resulted in the arrest of all the patrons. Those patrons whose identification documents looked false were held overnight. The next day investigations revealed one of the patrons was Professor Gee who it turned out had been visiting supporters in Pace at the time. The Pace Government handed Professor Gee over to the International Criminal Court stating Pace was not capable of conducting a domestic prosecution of Professor Gee. The Cainite Government protested the handing of Professor Gee to authorities in The Hague.

2.34; The International Criminal Court lists the matter of President Gee for hearing in March 2009.

3. The International Criminal Court

While the entirety of the Rome Statute applies to operation of the International Criminal Court the following articles may or may not be relevant to this matter

Rome Statute (extracts):

Preamble

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to

establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,
Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,
Resolved to guarantee lasting respect for and the enforcement of international Justice.

Part II Jurisdiction, admissibility and applicable law

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

Genocide

For the purpose of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7

Crimes against humanity

1. For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;

- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) 'Extermination' includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) 'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) 'Deportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) 'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) 'Forced pregnancy' means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) 'The crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the

intention of maintaining that regime;

(i) 'Enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, 'war crimes' means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or

damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or

unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 9

Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

- (a) Any State Party;
- (b) The judges acting by an absolute majority;
- (c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11

Jurisdiction *ratione temporis*

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

- (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
- (b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13

Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14

Referral of a situation by a State Party

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 24

Non-retroactivity *ratione personae*

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
 - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

- (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
- (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
- (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
- (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.
4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26

Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27

Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
 - (i) That military commander or person either knew or, owing to the circumstances

at the time, should have known that the forces were committing or about to commit such crimes; and
(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 30

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

Article 66

Presumption of innocence

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.

2. The onus is on the Prosecutor to prove the guilt of the accused.

3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

4. International Conventions

4.1; The Republic of Eden was, up until its breakup, at all relevant times a party to the four Geneva Conventions of 1949, and the two additional Protocols of 1977. The Republic of Eden signed the Rome Statute on 7 October 1998 and

deposited its instrument of ratification of the Rome Statute on 6 March 2002. On 1 August 2001 Pace announced that it would comply with all treaties and conventions entered into by the former Republic of Eden. Berbia announced on 1 August 2003 it would be ratifying all the treaties and conventions originally entered into by the former Republic of Eden. Shortly after the Berbian announcement President Dolittle announced that Cainite was repudiating all treaties and conventions entered into by the Republic of Eden.

5. INDICTMENTS before the International Criminal Court

5.1; Professor Gee is charged with the following violations of the Rome Statute:

a) Under Article 6 (b) of the Rome Statute individual and superior responsibility for genocide by causing serious bodily and mental harm to Berbians present in Cainite between 10 January 2001 and 5 December 2003.

b) Under Article 7(1)(a) of the Rome Statute superior criminal responsibility for the murder of some 100 men and young boys from the village of Smet in the Green Mountains on the Pace side of the border on or about 10 October 2003.

c) Under Article 8 (2) (b) (i) of the Rome Statute superior criminal responsible for the killing and injuring of non-combatants in Appletown by the use of snipers' and artillery between 2 October 2003 and 15 November 2003.

d) Under Articles 8 (2) (a) (vii) and 8 (2) (b) (xxiii) of the Rome Statute individual criminal responsibility for unlawful confinement and utilizing the presence of a Red Cross worker to protect Cainite Volunteers from attack on 10 August 2003.

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