

8th Red Cross International Humanitarian Law Moot (2010)

The Moot Problem

1. Background Information

1.1; RELEVANT PARTIES, PLACES AND THINGS:

Bigland – a medium-sized country on the eastern coastline of the continent of Lava.

Northland - a country to the north of Bigland.

Westland – a country to the west of Bigland.

Southland - a country to the south of Bigland.

Pumiceville - capital of Bigland.

Portville - Bigland port located where the River Styx flows into the ocean.

Vitavale - a mountain valley in the northern mountains of Bigland.

Dumosa – a town in Southland.

Quinty – a small village in Vitavale.

Henty - a small village in Vitavale.

General Sulphide - most experienced soldier subsequently appointed Dictator of Bigland.

Captain Phosphide - officer in the Bigland army.

Sergeant Bromide- soldier in the Bigland land army.

River Styx - runs from the mountains in the west, to the ocean on the east of Bigland.

Oxida tribe - occupy the upper reaches of the River Styx (including the capital, Pumiceville) and the western mountains of Bigland.

Nitrata tribe - occupy the southern mountains of Bigland.

Ferroda tribe - occupy the northern mountains of Bigland.

Bill Headline – famous freelance international war correspondent.

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 of the head note and the section or part of the judgement to be relied upon available for all judges in the moot in which the team is competing in the event a judge asks to see this reference. **Teams should not hand anything to judges unless asked to by a judge.**

1.3; The problem is not intended to raise questions of procedure before the International Criminal Court. Procedural questions should be ignored.

1.4; The problem is not intended to raise questions regarding the admissibility of the case under article 17 of the Statute of the International Criminal Court. Counsel shall assume that the case is admissible.

1.5; The problem may or may not raise questions relating to the jurisdiction of the International Criminal Court. Counsel should attend to jurisdictional questions.

1.6; Counsel are advised to check not only the Statute of the International Criminal Court, but also the Elements of Crimes adopted by the Court.

1.7; Teams acting for the Prosecution will be known as the Applicant. Teams acting for the Accused, General Sulphide, will be known as the Respondent.

2. The Facts

2.1; Bigland is a medium-sized country on the eastern coast of the continent of Lava. The country is ringed on the north, west, and south by gradually rising mountains. The River Styx runs from the mountains in the west, to the ocean on the east. The river is fed by smaller rivers from the mountains to the north, west, and south. The main agricultural area of Bigland is the valley along the course of the River Styx. In the west this valley is rather narrow, but as the river flows eastwards, the valley widens.

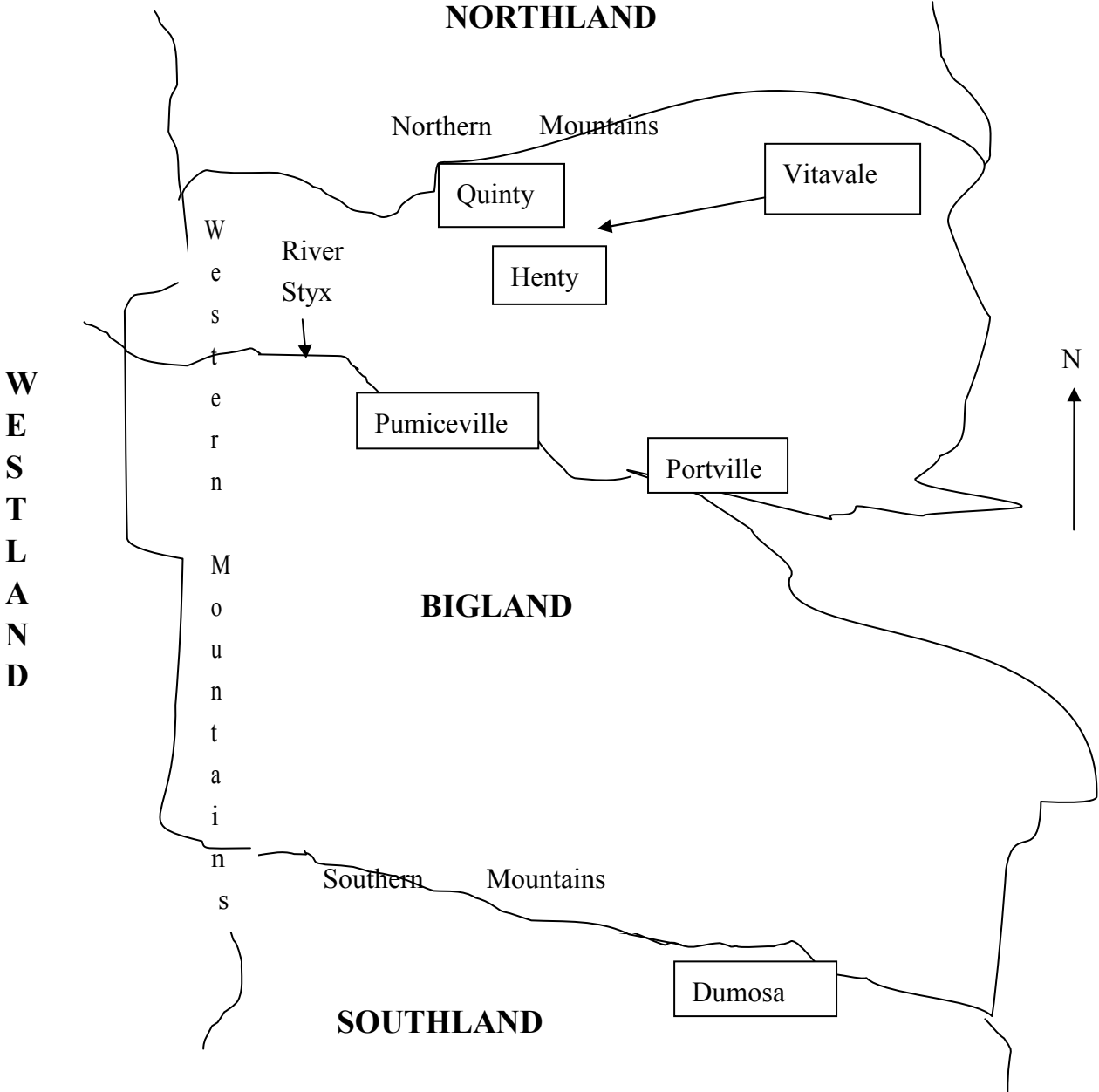
The capital of Bigland is the city of Pumiceville. This city lies almost in the geographic centre of Bigland, and is located on both sides of the River Styx. The only significant port is Portville, located where the River Styx flows into the ocean.

2.2; To the north of Bigland is the neighbouring country Northland. To the west is the neighbouring country Westland, and to the south is the neighbouring country Southland.

2.3; Ethnically, Bigland has three main tribes. The Oxida tribe occupy the upper reaches of the River Styx (including the capital, Pumiceville) and the western mountains. The Nitrata tribe occupy the southern mountains. The Ferroda tribe occupy the northern mountains. Each tribe is related to neighbouring tribes in the corresponding adjacent country and adjoining nation states.

2.4; The following map shows the location of the States, towns, villages and key features. The map is not drawn to scale. It represents the eastern side of the continent of Lava and shows amongst other things the States of Bigland, Northland, Westland and Southland.

Map not drawn to scale.



2.5; The mountains of Bigland contain a wide variety of mineral resources. These are mined in small local mines, and exported by barge along the River Styx to Portville. At Portville, the ores are transhipped to ocean-going vessels, and taken to markets in Lava and on other continents.

One of the resources is oil, which is mined in a mountain valley named Vitavale. This is in the northern mountains. The oil is stored in large tanks on site, and then piped to Portville for refining and export. Some of the refined oil is retained for domestic consumption.

2.6; As the value of the resources has increased, so also has the desire to control those resources. Tribal and sub-tribal leaders have sought to control the mining areas, and to control the revenue from sale of resources. Gradually in the 1990s, the government in Pumiceville began losing control over the more remote areas, and tribal and sub-tribal leaders are able to sell ores and buy arms. By 2002, the government only had effective control of the Oxida tribal areas in the west, and the land along both banks of the Styx river.

2.7; Most civilian and army personnel from the Nitrata and Ferroda tribes left the Bigland civil service and army to join with their tribes and form small militia-type groups. By 2004, the government, civil service, and army are largely composed of Oxida tribes' people.

2.8; Besides fighting the government, the Nitrata and Ferroda tribes also fight each other. In addition, there is fighting within tribes as leaders of sub-tribes seek to control more and more resources. The Nitrata and Ferroda tribes form armies. These armies have no formal uniforms, and are not well trained and disciplined. In practice, the armies are composed of smaller independent groups under tribal and sub-tribal leaders. These smaller independent groups may band together for large operations, but are not under clear chains of command.

2.9; The Bigland army is not large and is not well-trained or well-equipped. Bigland has no disputes with its neighbours, and the army has limited combat experience. However, a number of army personnel have served with United Nations forces in various theatres. The most experienced soldier is General Sulphide, who has served in United Nations operations.

2.10; In 2005, the Bigland government recalls General Sulphide for service in Bigland, to try to regain control over the country, through military means. General Sulphide returns to Pumiceville. In February 2006, the Bigland Parliament announces a State of Emergency, and appoints General Sulphide as Dictator for five years. The Parliament gives all power to General Sulphide, and then dissolves itself. General Sulphide rules by decree.

2.11; The small Bigland army is unable to achieve military control of the whole nation. General Sulphide introduces universal conscription for men aged 18 to 40 years. In practice, this is only effective to recruit Oxida tribes people, because the Nitrata and Ferroda tribes people simply ignore the conscription decree. The conscription means that the Bigland army expands rapidly, and there are few experienced soldiers to properly train the new recruits.

General Sulphide has a small group of soldiers from his own village as a personal guard. These soldiers have the best training and equipment in the Bigland army.

2.12; Bill Headline, a famous international reporter enters Bigland and is granted an interview with General Sulphide. Part of the interview records:

Bill Headline: General, why have you started conscription?

General Sulphide: Bigland is a prosperous nation, the people want to live in peace and I need more soldiers so I can create a safe and peaceful nation so democracy can return.

Bill Headline: Have you the resources to train these new soldiers?

General Sulphide: Yes and no. I will be able to fully train some but the rest will take more time. They will all receive some training but I think the mere presence of soldiers in uniform will make our towns and cities safer. Some of my officers are highly trained with overseas experience like mine. They will be working hard to prepare the new conscripts.

Bill Headline: General, how long do you think it will take you to stop the fighting?

General Sulphide: At the most a year.

2.13; The Nitrata and Ferroda tribal armies gradually seek to control the river west of Portville, and eventually launch attacks on Portville itself. This seriously disrupts the export trade. However, some resources (especially smaller quantities such as gold and diamonds) continue to be carried out of Bigland by trucks and animal caravans, and into neighbouring countries for sale. Some oil is taken by trucks northward into Northland. Passage along the River Styx becomes unsafe, and the only safe method of travel into Pumiceville is by air, or on poor quality roads from Westland through the western mountains.

2.14; In November 2006 the fighting enters a new phase. Nitrata and Ferroda fighters start using car and truck bombs in Pumiceville and Portville. One truck bomb explodes outside the Ministry of Health in Pumiceville as workers arrive in the morning destroying the building and part of the hospital next door killing two hundred people and wounding hundreds more. Several days later a car bomb explodes in a popular outdoor plaza in Portville killing forty people and injuring seventy others many of whom are women and children. These types of explosions become a regular event.

2.15; By the end of 2006, most foreign governments have advised their citizens to leave Bigland for their own safety. Many foreigners do this, especially those involved in technical posts in the mining industry. The oil industry in Vitavale is particularly affected by the evacuation of foreigners, but production and sale continue on a small scale. The oil wells are not shut down, and are left flaring. Although diplomats remain in Pumiceville, they send their families to safety.

2.16; In June 2007, the Nitrata and Ferroda armies drive the government forces out of Portville and capture the city. However, they are unable to agree, and fight among themselves for control of the city. Many civilians are killed or injured in the fighting. Most of the infrastructure is destroyed, and most surviving citizens flee Portville. At the same time, the Nitrata and Ferroda armies approach closer to Pumiceville, and are able to fire mortar shells at the airport, and occasionally fire hand-held ground-to-air missiles at aircraft trying to use the Pumiceville airport. All regular air services cease because of the danger.

2.17; Bigland army forces who enter areas occupied by Nitrata and Ferroda tribal supporters are attacked. Bill Headline travelling with one detachment of Bigland soldiers reported:

As we moved through the village some of us in armoured vehicles people watched from behind doors and the corners of buildings. On one occasion a man dressed like a civilian opened his coat, produced a gun and fired at soldiers before running into a nearby house. As the soldiers pursued the man they were attacked from behind by other 'civilians'. Later, as we were leaving the village, people dressed like civilians opened doors and run away as machine guns fired at our vehicles from inside the houses. A short distance outside the village we were again fired upon. The attackers were killed. They were boys aged about 12 or 13 years of age. This is a very nasty war in which every Nitrata and Ferroda tribesperson appears to be the enemy.

2.18; On 1 July 2007, the Dean of the diplomatic corps seeks an audience with General Sulphide. With the remaining diplomats present, the Dean advises General Sulphide that, in their opinion, Bigland is close to complete collapse. The government has lost control of much of its territory, and there is no attempt by the various fighters to form any kind of alternative government. The Dean advises General Sulphide that all diplomats are leaving Bigland. He asks General Sulphide for permission for an armed convoy to come into Bigland across the mountains from Westland, and to evacuate all diplomats and other foreigners. General Sulphide agrees to this request, and even provides some troops to escort the convoy. By the end of August 2007, all diplomats and other foreigners have left Bigland.

2.19; This event has a deep effect on General Sulphide. He decides that the situation is desperate and require some desperate measures to be taken. General Sulphide decides to expand conscription to all able-bodied citizens in Bigland. In practice, this means all able-bodied Oxida tribes people. In December 2007, in a series of rallies, he explains to his army and to the civilian population that Bigland is on the brink of destruction. General Sulphide says:

... the only way to survive is through a total commitment to the defeat of the Nitrata and Ferroda tribes' people. This is total war. They kill our men, women and children without notice. We must use any and every

available method. The violence in and around Pumiceville and Portville could happen to the whole country. We may be overwhelmed, and in its place there will be no government, only fighting...the Nitrata and Ferroda fighters do not wear uniforms, you cannot tell who is a fighter or who is a civilian except when one of them pulls out a gun, or bomb or a knife or a machete and attacks you or opens their door or window so a fighter can kill you by surprise. You must be careful and alert. You must be on guard all the time because our enemies have no rules. We must obey the rules but if you think you are in danger than you must protect yourself, you defend yourself. Remember they do not worry about rules. If you are defending yourself or your family or fellow citizens or your property you must do whatever it takes. Do not hesitate. We must defeat them. Anybody who shelters fighters, any Nitrata and Ferroda tribes' people who shelter fighters should be arrested and if they resist use force because they are also acting as fighters.

2.20; In January 2008, General Sulphide issues orders for a general offensive on all fronts. The slogan he gives to his army is "Victory through Aggression". The fighting which takes place in Bigland over the next few months becomes increasingly savage, as his poorly-trained armies swarm across Nitrata and Ferroda villages, killing many fighters and suspected fighters. The response against his army is equally brutal, and many atrocities occur.

2.21; Many civilians and injured fighters flee across the borders, hoping to find sanctuary with neighbouring sympathetic tribes. The government of Southland establishes a refugee centre and major hospital at a camp near to the border, in the town of Dumosa. Many Nitrata civilians and fighters flee to Dumosa. The government of Southland decrees that no arms may be brought into the camp. However, the day-to-day administration of the refugee camp is left to Nitrata people. There is even a small informal police force of Nitrata personnel, armed with truncheons and pistols. The adjacent hospital is administered by the National Red Cross Society of Southland. As Southland is a signatory to the Third Protocol to the 1949 Geneva Conventions, the Hospital is prominently marked with the Red Crystal.

2.22; In May 2008 General Sulphide complains to the Southland government that the refugee centre is in practice a recruiting ground for Nitrata forces, and that the hospital is sheltering injured Nitrata fighters who will return to battle.

The Southland government denies these claims, and offers to set up an investigation. Local Southland newspapers report armed fighters from across the border walking the streets of Dumosa and controlling the refugee camp on the outskirts of Dumosa. By the end of June 2008, no investigation has begun. On 30 June, General Sulphide assembles a small force from his army, and personally leads a raid across the border to Dumosa. He divides his force into three parts: one part to keep control of Dumosa and the route back to Bigland, one part to raid the refugee camp, and one part to raid the hospital. He commands the first part, and he selects Sergeant Bromide to lead the second group and Captain Phosphide to lead the third group. General Sulphide instructs his forces to wipe out Nitrata fighters and anyone who acts like a fighter.

2.23; The force seeking to enter the refugee centre is fired on at once by a few shots from small arms from within the centre. Sergeant Bromide assumes that the small arms fire comes from Nitrata fighters, and instructs his group to return fire. Using bullhorns, he announces to civilians that they must leave the refugee camp within five minutes. After five minutes his force set fire to the refugee camp to drive out any Nitrata fighters. But the time has been insufficient for many refugees, and some are killed by the fires, while others are killed by the shooting. Once the refugee camp is in flames, Sergeant Bromide and his force retreats.

2.24; Captain Phosphide's force quickly enters the hospital. They do not recognise the Red Crystal, which has not been included in their very limited training. Bigland soldiers run through the wards, shouting to Nitrata fighters to surrender. They fire into the ceilings. One patient leaps at the Bigland soldiers with a broomstick, and the soldier shoots him. In the chaos, some Bigland soldiers think that they are under attack. In fact, there is no attack. The soldiers begin shooting wildly, and some patients and staff are killed. Captain Phosphide eventually regains control of his force, and they retreat. Banding together, General Sulphide's troops cross back into Bigland.

2.25; At the same time, other Bigland forces have been trying to take control of the north of the country, controlled by Ferroda forces. But the Ferroda forces are well entrenched in the mountains. The Ferroda forces are not united, but the most significant force has its headquarters in Henty. Henty is

located in Vitavale, and gives the Ferroda forces access to the oil resources of the valley. The leaders of the Ferroda sub-groups meet in Henty.

2.26; In August 2008, General Sulphide takes direct control of the operations against Ferroda forces. Bigland forces attempted to attack Henty, but because of its remoteness and the quality of the defences, their attacks were repulsed.

2.27; Through interrogation of captured prisoners and civilians, General Sulphide learns that a meeting of Ferroda and Nitrata leaders is to take place in Henty on 15 September 2008. He again leads an attack by Bigland forces against Henty. However, General Sulphide's forces are not able to meet their goal. The Bigland forces are defeated and scattered. General Sulphide is captured by Nitrata and Ferroda forces, and held in Henty.

2.28; Because of the danger from the remnants of Bigland forces, on 18 September 2008, the Ferroda and Nitrata forces move General Sulphide to Quinty, another small village in Vitavale.

A Bigland soldier who had been a prisoner with General Sulphide escapes, and finds the remnants of General Sulphide's personal Guard. All the officers of the guard have been killed, and the guard leader is Sergeant Bromide. Although his force is now very small, Sergeant Bromide prepares to attack Quinty to release General Sulphide. Sergeant Bromide encourages the Guard to do their duty for General Sulphide. He reminds them of two special sayings of General Sulphide: "Victory through Agression" and "Desperate times require desperate measures". Sergeant Bromide tells the Guard that they are the elite of General Sulphide's troops, and they should continue to carry out the General's wishes.

Sergeant Bromide has great personal loyalty to General Sulphide. Also, Sergeant Bromide is aware that General Sulphide is the only really capable leader in the Bigland army. Sergeant Bromide feels that, without General Sulphide, Bigland will collapse into lawlessness and anarchy.

2.29; On 20 September 2008, Sergeant Bromide leads the Guard to attack Quinty. The attackers do not know that the Ferroda and Nitrata forces have left the village on 19 September, taking General Sulphide and other prisoners

with them. Only two Ferroda soldiers are left in the village, and Sergeant Bromide and the Guard quickly overcome all resistance.

Sergeant Bromide is frustrated by the absence of General Sulphide. He assembles the villagers in Quinty, and demands to know where General Sulphide has been taken. When they remain silent, Sergeant Bromide personally kills the two Ferroda soldiers. The villagers tell Sergeant Bromide that they do not know where General Sulphide has been taken. Sergeant Bromide does not believe them. He tells them that he will kill every tenth person until they give him the information.

The villagers plead that they do not know the location of General Sulphide. Sergeant Bromide begins to carry out his threat, and sets aside ten villagers, and then kills one of them.

At this time, a force of Nitrata fighters approaches the village of Quinty. Sergeant Bromide and his small Guard flee from the village, and disperse in the countryside.

2.30; Fighting continues through 2008. The Ferroda and Nitrata forces are unable to agree what to do with General Sulphide, and in January 2009, they hand General Sulphide over to the Southland government. Bigland had an embassy in Southland, and the embassy building is still intact. The Southland government place General Sulphide in the embassy building, but forbid him to leave Southland until his status is decided. General Sulphide is unable to communicate with his fighters.

Without General Sulphide's leadership, in the last months of 2008 the Bigland army disintegrates into armed tribal gangs. Fierce fighting, with many atrocities, continues between the tribal forces. Many civilians flee to neighbouring countries, and the very large number of refugees far exceeds the capacity of these countries to care for them. They seek international help.

2.31; Until early 2009, the governments of the neighbouring countries had stayed aloof from the conflict. But with the capture of General Sulphide and the disintegration of the Bigland army, there is no effective government at all in Bigland or any part of it. The neighbouring countries fear that the conflict will cross their borders and involve related tribal peoples. The mining

companies also press the neighbouring countries to help restore peace in Bigland. Accordingly, the neighbouring countries co-operate in a plan of action.

2.32; From February 2009, the neighbouring countries agree on an embargo of all arms and other materials entering Bigland. They also agree to ban all shipments and sales of Bigland resources through their borders and territory. This is intended to deprive the various fighters of arms, and it succeeds. From February until June 2009, the scale of fighting remains the same, as the fighters use their remaining weapons, or change to more primitive weapons such as spears, machetes, and axes. After June 2009, the scale of fighting begins to abate.

2.33; In July 2009, a combined army composed of Southland, Northland, and Westland personnel as well as units from other countries in Lava, invades Bigland. There is fierce but disorganised resistance from the various fighters in Bigland. Eventually the combined army gains effective control in Bigland.

In order to minimise further resistance, the combined army offers an amnesty to all fighters who surrender their weapons and return to their villages. Only the most senior officers or those who have committed the most serious offences are excluded from the amnesty.

2.34; As the Justice system in Bigland has ceased to operate, the court system is replaced by temporary military tribunals operated by combined army personnel. They seek to re-establish local courts in the villages to handle ordinary offences. Among them is Sergeant Bromide.

But the senior officers or those who have committed the most serious offences are handed over to the International Criminal Court for prosecution. Among them is General Sulphide.

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; At all relevant times, Bigland, Southland, Westland and Northland have ratified the Geneva Conventions of 1949 and the 1977 Protocols. All four countries have ratified the Statute of the International Criminal Court. Only Southland has just recently ratified on 30 May 2008 the 2005 Additional Protocol III to the Geneva Conventions of 1949.

5. INDICTMENTS before the International Criminal Court

General Sulphide is charged with the following offences under the Statute of the International Criminal Court (“the Statute”):

5.1; First Indictment:

Directly or as a superior, conscripting or enlisting children under the age of fifteen years into the Bigland armed forces, through his policy of conscripting all able-bodied citizens without reference to their age, contrary to article 8 (2) (e) (vii) of the Statute.

5.2; Second Indictment:

Declaring that no quarter will be given, in his addresses to Bigland forces in December 2007, contrary to article 8 (2) (e) (x) of the Statute.

5.3; Third Indictment:

Directly or as a superior, intentionally carrying out attacks on the civilian population, in the attack of 30 June 2008 on the refugee camp in the town of Dumosa, contrary to article 8 (2)(e) (i) of the Statute.

5.4; Fourth indictment:

Directly or as a superior, intentionally directing attacks against a hospital in the attack of 30 June 2008 in the town of Dumosa, contrary to article 8 (2) (e) (iv) of the Statute.

5.5; Fifth indictment:

Directly or as a superior, intentionally directing attacks against a hospital which is marked with the distinctive emblems of the Geneva Conventions, in the attack of 30 June 2008 in the town of Dumosa, contrary to article 8 (2) (e) (ii) of the Statute.

5.6; Sixth indictment:

As a superior, causing death in the killing of two soldiers and a civilian by Sergeant Bromide at Quinty on 20 September 2008 contrary to article 8 (2) (c) (i) and article 8 (2) (e) (i) of the Statute.

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