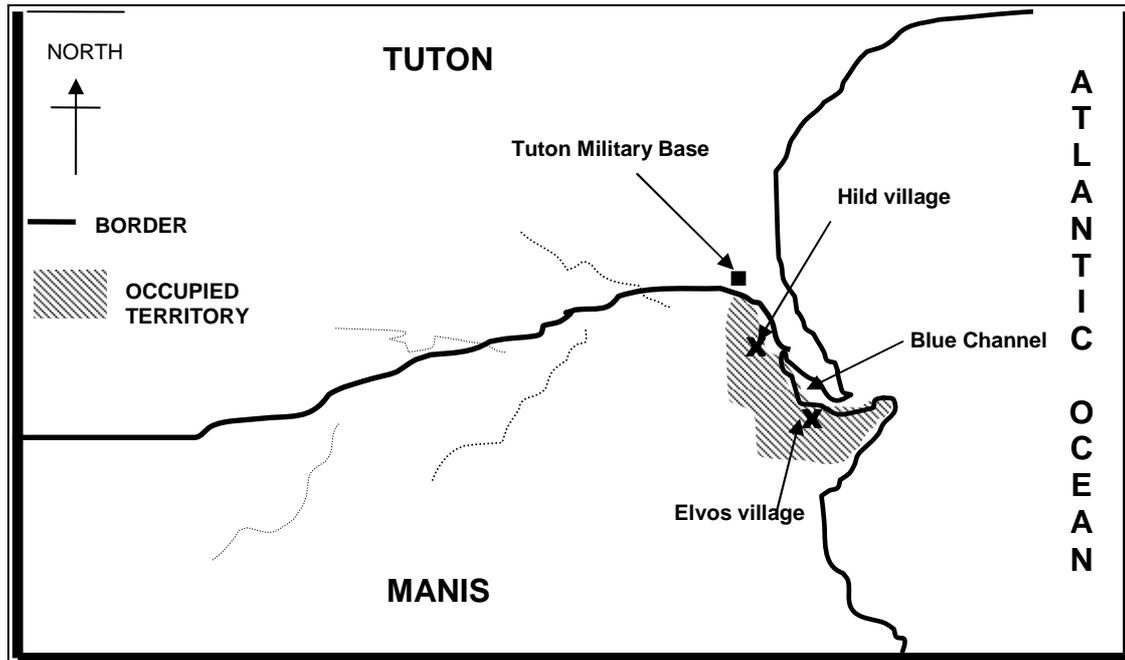


**Australian Red Cross**  
**in association with**  
**The Australian Law Students' Association**

**INTERNATIONAL HUMANITARIAN LAW**  
**MOOT COURT COMPETITION**

**Hobart, July 2008**

**Problem**



Manis and Tuton share not only a mountainous, inaccessible border region stretching some 1000 kilometres but also a violent history. Fifty years ago, after a bitter struggle for independence the former annexed territory of Manis became (and was internationally recognised as) an independent country. Since then the mountainous border zone has experienced skirmishes as each country struggles to gain control of the poorly demarcated border region. In the last 10 years violence has escalated in the eastern border region, which provided access to the Atlantic Ocean and profitable shipping routes.

In early 2004 violent border clashes increased between the military forces of Manis and Tuton. There were both civilian and military losses. In an attempt to frustrate Tuton's supply and shipping routes, Manis made Tuton's access to the Blue Channel increasingly difficult. Tutonian's were increasingly angered at the resulting restrictions on trade and growing food shortages. In late 2004 thousands demonstrated in the streets of its capital calling for Tuton's government to "defend its sovereign right to feed its people".

On 1 April 2005 Tuton's military forces invaded the north-eastern border region of Manis, claiming its "sovereign right to freely access the Blue Channel." After sustained fighting and high numbers of military and civilian casualties, Manis' military forces in the area were defeated. Tuton's military forces took control of the region, occupied it and established a temporary administration over the area in May 2005. The sustained fighting destroyed several public buildings and damaged Manis' water supplies and power grid in the north-east region.

By June 2005 fighting along the entire border zone escalated with both sides conducting cross border incursions and shelling campaigns.

From January 2005 Col. Potter was the Base Commander of the Tuton military base (the **Base**), and in was charge of Tuton soldiers in Hild and the immediate vicinity. The Base was located in Tuton, some 2kms north of the border. By June 2005 several Tuton military check points in the occupied area were set up under his command, including along the road leading to Hild. The village Hild was fairly isolated in the mountains close to the border, and relied on southern Manis villages for some of its food, as well as the connection to its water and electricity networks.

The majority of Hild villagers commuted south to larger towns for work and to access major healthcare services. The village was strategically placed in the mountains overlooking the border region and conflict zones where there was continued fighting. The fighting damaged roads and infrastructure near Hild and the surrounding area. This made access to Hild even more difficult.

From May 2005 Col. Potter's soldiers patrolled the areas in and around Hild in an attempt to restore order and peace. By mid-June 2005 a nightly 11pm curfew was imposed in Hild. Sporadic incidents of armed resistance and violence against Tuton soldiers and military vehicles were widely reported in Hild throughout June – August 2005. During this time the Tuton authorities detained (for trial in temporary courts not yet established by August 2005) those suspected of acts of violence against its forces in and around Hild.

Meanwhile, cross border incursions and shelling campaigns continued to damage civilian buildings, outlying farmlands and water supplies in Hild, with the village being left without water for days. Some farmers returning from outlying fields were wounded when they stepped on unexploded ordinance. Throughout June – August 2005 Col. Potter's soldiers were routinely seen stopping and searching local vehicles, including public and school buses. During this time local media sources reported that Col. Potter and his soldiers were searching for "Manis guerrilla sympathisers and weapons".

In Hild and surrounding villages sporadic attacks (mostly at nightfall) were carried out against Tuton military forces. On 15 July 2005 a bomb exploded in Hild near the local Tuton military barracks. Four off-duty Tuton soldiers were killed. A week later a military jeep (part of a Tuton military supply convoy) was attacked by a bomb triggered by the passing vehicles on the road. After the two bomb attacks Col. Potter received information from a local informant that members of Manis guerrilla units from the south might have been infiltrating Hild and the surrounding area to carry out these attacks.

In mid July 2005 Tuton soldiers under Col. Potter's command stepped up their security in Hild and the surrounding area. This included 24 hour checkpoints on the entry road to Hild. Local Hild villagers either leaving for work or returning to the village at dusk after work were routinely stopped and bags and vehicles searched. All persons stopped were asked to show ID proving that they lived in Hild, otherwise they were refused access. Col Potter's men

questioned those trying to enter the village about their work and family members. In some cases this delayed villagers from returning home for several hours past nightfall, and caused workers to leave before dawn for work.

During July and August 2005 there were also reported incidents of Col Potter's men searching food and supplies brought by villagers into Hild. Bags of rice, flour and beans were reported as broken open, spilt and searched. Villagers were angered at what they called the deliberate waste of their food when supplies were scarce. The soldiers claimed the actions were necessary security measures against daily threats.

Col. Potter was overheard on or around 20 July 2005 (at the Hild checkpoint) telling locals (including school children, women and workers) that the searches and delays of persons and vehicles were necessary for "the imperative security of the Manis population" and the "imperative military objective of defeating Manis resistance elements" in the occupied area. He was heard saying that it remained a priority for him to stop "any elements within Hild rising up to destroy us in collusion with the Manis enemy further south."

The next morning Col. Potter left Hild for the Tuton military base. A week later the soldiers at the entry checkpoint refused to allow some building equipment and water-sanitation experts from larger cities in Manis' south to enter Hild. The soldiers expressed concern at the recent attacks on Tuton military vehicles and the barracks and rumours of Hild's infiltration by Manis guerrillas from the south. The damaged water pipes and electricity networks remained unrepaired.

In July and August 2005 Tuton soldiers in Col. Potter's unit were seen putting up notices in the public square. The notices offered to relocate villagers to the southern village of Elvos, a larger village further away from the border. It had undamaged water and power networks. It also had shops, a local food market and a medical centre.

The public notices called on villagers to consider the health and well-being of their families and children and indicated that the ongoing lack of water, food and armed attacks made Hild both unsafe and a potential health risk. The notices also stated that the Tuton authorities would arrange billeting with local Elvos families for any Tuton families with children or the elderly, who registering to move to Elvos. By mid-August 2005 several buses a week were seen leaving Hild carrying civilians and their property, with queues forming at the bus station.

---

By late June 2005 Manis has also increased its attacks over the northern border with Tuton. This included nightly raids conducted by guerrilla units from Manis' military forces on the Base in Tuton territory.

The Base included a reasonably sized medical facility staffed by approximately 20 permanent military medical personnel. Due to continued nightly raids and a severe shortage of available able personnel, on 22 July 2005 Col Potter ordered most medical personnel to assist with general protection of the Base, including patrols to identify Manisian units attempting to infiltrate the border to reach the Base.

On 30 July 2005 a unit of Tuton's military medical personnel who wore brassards bearing the red cross emblem, carried light personal weapons, and travelled in an armoured vehicle also bearing the emblem, conducted a patrol around the Base. Approximately 2km from Base they came upon an enemy unit of Manisian military in an armoured vehicle that was proceeding in the general direction of the Base.

Manisian soldiers identified the approaching unit as medical personnel and continued their course. One of Tuton's military medical personnel saw the Manisian soldiers continue to approach, became nervous, and fired his weapon at their vehicle. Manisian soldiers immediately returned fire. A short battle ensued and six Manisian soldiers were killed. Tuton's military medics returned to Base and resumed their patient rounds.

### **End of the conflict**

Fighting between Manis and Tuton continued for another four months, until 1 December 2005, when a UN brokered peace agreement finally succeeded in bringing some measure of stability to the region. In order to strengthen the fledgling peace a UN backed tribunal was established, aimed at identifying and trying those responsible for the most serious crimes committed during the conflict. Both Tuton and Manis governments agree to the jurisdiction of the UN Special Court.

The Special Court was mandated to try individuals accused of having committed the most serious violations of the Laws and Customs of War in Manis and Tuton during the period of the conflict.

The Prosecutor subsequently brought indictments against a number of Tuton Sector Commanders, alleging various crimes.

Col Potter was among those to be prosecuted under the relevant part of the Special Court's Statute – Articles 1, 2, 3 and 7 (set out below)<sup>1</sup>:

### **Article 1 Competence of the International Tribunal**

The Special Court shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory

---

<sup>1</sup> Articles 1, 2 and 7 of the Special Court's Statute reflects Articles 1,2 and 7 of the ICTY Statute. Article 3 of the Special Court Statute reflects Article 8(2)(b)(vii) of the ICC Statute.

of the Manis and Tuton since 2004 in accordance with the provisions of the present Statute.

## **Article 2**

### **Grave breaches of the Geneva Conventions of 1949**

The Special Court shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

## **Article 3**

### **Violations of the laws or customs of war**

The Special Court shall have jurisdiction in respect of 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) 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.

## **Article 7**

### **Individual criminal responsibility**

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.
2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the

subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

## **CHARGES**

The Office of the Prosecutor has issued an indictment against Col. Potter that includes the following charges:

### **Count 1**

From 1 April 2005 – 1 December 2005, Col. Potter, as Commander of Tuton military forces in Hild and the surrounding region, ordered the unlawful transfer of civilians from Hild to Elvos.

By his acts and omissions, Col. Potter is responsible for:

**COUNT 1: Violations of the Laws or Customs of War** (unlawful transfer of a civilian population in an occupied territory, as set forth in Articles 49 and 147 of the Fourth Geneva Convention of 1949) punishable under Articles 2, 7(1) and 7(3) of the Statute of the Special Court.

### **Count 2**

From 1 April 2005 – 1 December 2005 Col. Potter, as Commander of the Tuton military forces in Hild and the surrounding region, ordered the improper use of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury.

By his acts or omissions, Col. Potter is responsible for:

**COUNT 2: Violations of the Laws or Customs of War** (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, as set forth in Article 37 and/or Article 38 of Additional Protocol I to the Geneva Conventions of 1949) punishable under Articles 3, 7(1) and 7(3) of the Statute of the Special Court.

## **YOUR BRIEF**

You have been nominated to act as either the prosecution or defence team for Col. Potter in relation to the charges listed above.

In preparing your arguments you are to assume that:

- Both States involved in the conflict have signed and ratified the Geneva Conventions and their Additional Protocols I & II.
- Issues of evidence and procedure are not relevant to your argument.
- Only the offences with which Col. Potter is actually charged with are to be taken into account.

## **INDICATIVE CASE LIST**

*Kordic and Cerkez* (Trial Chamber) 26 February 2001; and see also the decision of the Appeals Chamber, 17 December 2004.

*Naletilic and Martinovic* (Trial Chamber), 31 March 2003.

*Prosecutor v. Dusko Tadic a/k/a "Dule"* (Jurisdictional Decision) IT-94-1.

*The Prosecutor v Milomir Stakić*, (Appeals Chamber) 22 March 2006.

*The Prosecutor v Momčilo Krajišnik* (Trial Chamber I) 27 September 2006.

*The Prosecutor v Vidoje Blagojevic and Dragon Jokic* (Trial Chamber) 17 January 2005.