

**2009 SUSAN J. FERRELL INTERNATIONAL MOOT COURT
COMPETITION**

PROBLEM

THE CASE CONCERNING THE PEOPLE OF BAROKO

1. The State of Panga is a democracy with a parliamentary form of government. It is situated in the eastern region of the continent of Manicius; so are the States of Ringa and Gola. Gola is located to the west of Ringa, while Panga is located to its east. Panga is the dominant economic and military power in the region.
2. Historically, the continent of Manicius had been under colonial domination from powerful states on the continent of Tramano. One of the colonizing states, Binda, started a war against the other powers in Tramano in order to dominate the continent and the world. In 1918, Binda was defeated. The victorious states, including the State of Tango, decided to seize and take over her colonial possessions through a Peace Treaty entered into in Vanili, the capital of Tango (the “Peace of Vanili”). At that time, the territory of Ringa was one of Binda’s prized possessions on the continent of Manicius. The Peace of Vanili handed Ringa over to Tango. Tango also owned Gola, a territory to the west of Ringa. Tango administered Ringa as an autonomous colony.
3. As time passed, and under increasing pressure from the colonies and internal constituencies, the victorious powers realized that their hold on the continent of Manicius was not only tenuous, but morally wrong. They convened a conference, in 1945, which developed the historic “Manicius Plan of Action.” In this policy document, they decided to unconditionally grant independence to all their colonial possessions if the inhabitants of these territories chose that option by referendum under United Nations supervision. This process was to be completed by January 1, 1960. In properly administered referenda, both the populations of Ringa and Gola decided, by over 90% of their vote, to become independent. Tango scheduled December 31, 1959 as the date of withdrawal of her administration from both Gola and Ringa – thus demarcating the last day, year and decade of colonial rule. Ringa and Gola became independent the next day.
4. Ringa’s independence was marred by a simmering controversy over the destiny of the people of Baroko. Originally, the tribes of the Baroko and the Yoke formed part of the same clan, the Chomba clan. Both were living east of the Malingo River, on the territory of Gola, and shared the same culture, religion and customs. A chieftaincy dispute forced

the disgruntled Baroko faction to cross to the other side of the Malingo River, on Ringa territory, where they have now settled for more than 400 years. Their new settlement provided fertile land conducive for their subsistence activities of raising and herding cattle and goats. They, however, continued visiting with their kith and kin on the other side of the river, leading to cordial interpersonal relations and intermarriage. On a daily basis, members of both tribes criss-cross the Malingo River to visit their families and relatives. This was the socio-cultural setting the colonial powers met. The colonial administrative apparatus was embraced by the Yoke, but bluntly denounced by the elite of Baroko. Tango proceeded to set up colonial institutions in Yoke. Binda, however, during its time of colonial rule, while establishing colonial structures within the rest of Ringa territory, respected Baroko self-rule and did not set up its own administrative structures in the territory of the Baroko. The Tango colonial administration that replaced Binda's after the Peace of Vanili, also did not interfere with the Baroko scheme of self-government and their way of life. The Baroko people have been led, since time immemorial, by the Supreme Baroko Authority, headed by a Chief and other traditionally selected leaders.

5. The elites of Baroko perceived the Yoke as assimilating the colonial power's values and institutions and thus as traitors who were embracing an alien way of life that had the potential to destroy the Chomba tradition. This perception increased the tensions between both tribes and eroded their traditional cordial relations. Ordinary people continued to visit their relatives, but the chiefs no longer held the annual common meetings they used to hold prior to colonization. In 1954, Professor Frans Boggel, a renowned scholar in Tramano, published a comprehensive study entitled The Transparent Curtain of Culture on the Gola/Ringa Border Stretch. It revealed that, although the colonial masters had long divided the natives into Gola and Ringa respectively, the people still shared much in common. He wrote:

Although a political line sought to tear the Chomba people apart, the bonds of culture have been too strong to be broken and the decision by Tango to administer Ringa as a part of Gola, is a timely political repair of a cultural damage. What I have found along this border is a divided people who have somehow refused to be divided. The fact remains, however, that the natives to the east of the Malingo River maintain a higher level of originality than those to the west. The eastern natives have remained indigenous peoples but those to the west have fully embraced foreign systems.

Boggel carried out his study during the colonial era. Colonization thus produced two distinct communities: an assimilated tribe (Yoke) and an indigenous society that represented a unique cultural island along the coastal border. The Government of Tango realized this and, as a precondition to granting independence to Ringa, Ringa was made to promise to respect the will of the Baroko people and their freedom from all outside

interferences as Tango herself had done. Therefore, on January 1, 1960, in a treaty signed by representatives of Ringa, Tango, Panga and Baroko, all four parties acknowledged the autonomous status of the Baroko people. Ringa pledged not to interfere with the way the Baroko government dealt with activities on their land and regarding their people. Tango and Panga “*recognized and guaranteed*” the autonomy of Baroko; “*in the event of a breach*” of this treaty, each of these two guarantor powers “*reserve[d] the right to take action with the sole aim of re-establishing the state of affairs established by the treaty.*” At the same time, Ringa enshrined the autonomous status of Baroko in its constitution. Things went on cordially for the next ten years after independence.

6. In 1974, representatives of Ringa and Gola met secretly to deliberate on solving the debt crisis of Ringa that was the topic of discussion at the Regional Economic Summit of Manicius states. At that summit, Gola, which had had a similar economic burden, was hailed for the record success in repaying all her debts and for making huge contributions to solve development efforts on the continent. Leonardo Perez, Gola’s Economic and Finance minister was elected as the President of the Finance Management Committee. When officials of both states met after the summit, a *tête-à-tête* discussion ensued between the two diplomats in which the ambassador from Gola made it known to his counterpart from Ringa that the secret behind their economic progress were the huge oil deposits that were being exploited in Yoke territory, and that similar deposits had been found in Baroko, a territory which shared similar geological features. Mr. Perez stated that he had visited the Chief of Baroko accompanied by the Chief of the Yoke and a few scientists in a supposed reconciliation meeting. The real purpose of this meeting, however, was to carry out feasibility studies. These studies revealed that there existed more oil deposits in Baroko than in the entire territory of Gola. Ringa and Gola concluded a secret treaty to cooperate in exploiting the rich oil and mineral deposits in Baroko, and Ringa promised to take steps to assimilate the “culturally sensitive” people of Baroko.
7. Ringa proceeded to insert an article into its Constitution which stated that the members of the Baroko people were henceforth to be considered “*as citizens of Ringa with all due rights and privileges.*” The autonomous status clause for Baroko in the Ringan Constitution was repealed. The president authorized the creation of administrative departments of the central government in Baroko “*as a measure to civilize the people of Baroko that will also enable Ringa to emerge from its protracted debt crisis.*” Meanwhile, a group calling itself the “Movement for the Cultural Integrity of Baroko” (MCIB) carried out a secret investigation. According to their findings, which they made public, vast amounts of gold and oil reserves had been discovered in the Baroko area. According to a Ringa government plan, members of the Baroko elite who opposed the integration efforts were to be eliminated; in an effort to check the demographic growth of Baroko, medical personnel were ordered to carry out an extensive vaccination campaign

intended to cause sterility among Baroko youths; and the Baroko language was to be replaced by the national language of Ringa as the language of instruction in public schools. The MCIB stated in a strongly worded memo in the Baroko language that “[w]e will do all we can in our power to resist the colonization of Baroko by Ringa!” Following the MCIB declaration, the Minister of Interior of Ringa was dismissed and charged with high treason for “*leaking top state secrets to ignorant natives who are threatening the interests and territorial integrity of Ringa when these secrets were made known to them.*” This implicit confirmation of the MCIB findings by the Ringan government provoked the Supreme Baroko Authority to pass a resolution declaring that Baroko was no longer a part of Ringa, and that it considered itself independent. A copy of this document was handed to the ambassador of Tango in Ringa. Alarmed by the withdrawal of Barokan autonomy, fearing the ethnocide of Baroko and mindful of its responsibilities under the 1960 treaty, the Tangan government recognized Baroko as an independent state. Ringa rejected the Supreme Baroko Authority’s resolution outright, moved its troops to Baroko, and declared a state of emergency.

8. The MCIB launched a campaign of civil disobedience, and the Supreme Baroko Authority declared its “*unflinching support for the MCIB.*” Hundreds of Barokans were arrested and taken to the capital of Ringa in hopes that the movement would surrender. As the campaign intensified and more and more people were arrested, common prisoners were released to create space for the imprisonment of the Barokans. As the jails proved to be insufficient to accommodate all detainees, the government converted military camps into detention centers. Persons considered to be leaders of the MCIB were tied up and placed in solitary confinement in cells without light. Government officials, concerned about the next action of the independence movement, interrogated these “high-level targets” about their future plans. To enhance their cooperation, each of these detainees was exposed continuously to the repetitive playing, at high volume, of two rap anthems: Eminem’s “*White America*” and Saliva’s “*Click Click Boom.*” One of the captives went on a hunger strike; the guards force-fed him to keep him alive. Some prisoners were kept in stress positions for 24 hours a day. As a consequence, several Barokans died in detention; others simply disappeared. A good number of Barokans escaped into nearby Panga.
9. The United Nations decided to intervene in the deteriorating situation. The Human Rights Council appointed a country rapporteur who visited Ringa. He reported that the people of Baroko were indigenous persons and deserved protection from the actions of the government of Ringa. He also presented a disturbing picture of the recent developments as described above. Upon receiving his report, the President of the UN Security Council convened an extraordinary session to consider how to respond to this crisis.

10. Human Rights Shield International (HRSI), an NGO in Panga, had received several complaints from Baroko people, many of whom were seeking refugee status in Panga. It compiled a comprehensive report on the human rights situation in Ringa occasioned by the Baroko crisis. Mr. Carlos Durango, Executive Director of HRSI, decided to fly to Maramas, the capital of Ringa, on a tourist visa in order to present this report in a widely publicized press conference and to appeal to the government of Ringa for relief. Immediately upon concluding his remarks, he was arrested by the Ringan authorities and put on the next plane returning to Panga. In a press release, Ringa's Minister of Public Information declared that Mr. Durango had been expelled from Ringa because of his engaging in political activity undermining the government in violation of his status as an alien. He was prohibited from ever again setting foot in Ringa.
11. The Pangan government grew ever more alarmed over the situation in Ringa which, in its view, seriously threatened the stability of the region. Its Ambassador to Ringa submitted diplomatic notes to the Ringan government protesting the withdrawal of Barokan autonomy and the treatment of the Barokan people as well as of Mr. Durango. The Ringan Minister of Foreign Affairs rejected these communications as "*intolerable intervention into the domestic affairs*" of his country. At the same time, the Supreme Baroko Authority asked for "*all civilized nations' support against the outrageous attack visited on us by Ringa.*" It particularly implored Panga as the local guarantor power to come to its rescue. As the number of Barokans crossing into and seeking refuge in Panga now had grown to over five-hundred persons per day, the Pangan Cabinet decided to respond: It formally recognized the State of Baroko and threatened a full-scale invasion of Ringa if Ringa did not restore Baroko's *status quo ante*. To underscore its determination, using a laser-guided missile, it blew up the command and control center of the Ringan armed forces.
12. On September 22, 2008, Panga's Ambassador to the Netherlands filed an application with the Registrar of the International Court of Justice, alleging that Ringa violated international law by the withdrawal of Baroko's autonomy, the outrageous treatment of the Baroko people, and the expulsion of Mr. Durango. In particular, Panga alleged violations of the January 1, 1960 treaty between Tango, Ringa, Panga and Baroko; the 2007 UN Declaration on the Rights of Indigenous Peoples; the 1966 International Covenant on Civil and Political Rights; the 1984 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; and customary international law. The application was duly served upon Ringa. The State of Ringa responded by stating that the International Court of Justice lacked jurisdiction, as the case was presently considered by the UN Security Council; that it was inadmissible as it involved a political question as essential as the territorial and political integrity of the state; that Panga could not represent the people of Baroko; and that, as a sovereign state, Ringa could deny entry to any foreigner on any reason it considered appropriate. Ringa also filed a counter-claim

to the effect that Panga's actions constituted a blatant aggression and violation of her sovereignty and territorial integrity contrary to article 2 of the UN Charter.

13. At all relevant times, Panga and Ringa have been members of the United Nations and parties to the Statute of the International Court of Justice. They have accepted, without reservation, the Court's compulsory jurisdiction according to Article 36(2) of its Statute. Both states have also ratified the 1969 Vienna Convention on the Law of Treaties, the 1966 International Covenant on Civil and Political Rights, and the 1984 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

14. The Applicant, the State of Panga, requests the Court to adjudge and declare that:

- (a) The International Court of Justice has jurisdiction to adjudicate this dispute.
- (b) The case is admissible.
- (c) Ringa's abolition of Barokan autonomy violated the 1960 Treaty between Ringa, Tango, Panga and Baroko as well as other standards of international law.
- (d) The treatment of the Barokan people violates essential standards of human rights and the rights of indigenous peoples.
- (e) Baroko's declaration of independence and Panga's recognition of Baroko as an independent state are consistent with international law.
- (f) The expulsion of Mr. Durango violates international law.
- (g) The military actions taken by Panga were justified under international law.

15. The Respondent, the State of Ringa, requests the Court to adjudge and declare that:

- (a) The International Court of Justice lacks jurisdiction to hear this case.
- (b) This case is inadmissible.
- (c) Baroko is part of Ringa, and Ringa's abolition of Baroko's autonomy was legal under international law and necessary to ensure the economic survival of the nation.
- (d) The treatment of Barokans was legal under international law or at least justified to address an internal emergency.
- (e) Baroko had no right to secede; Panga violated international law by recognizing it as a state.
- (f) The expulsion of Mr. Durango was an exercise of Ringa's territorial sovereignty in full accord with international law.
- (g) By threatening Ringa's invasion and destroying its vital military infrastructures, Panga committed acts of aggression in violation of the United Nations Charter and other international law.