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First Annual International Criminal Court Moot Competition: Moot Problem 2005

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MOOT PROBLEM 2005

PACE LAW SCHOOL WISHES TO ACKNOWLEDGE THE VALUABLE CONTRIBUTIONS OF DR. ROY S. LEE WHOSE ORIGINAL PROBLEM AND BRIEFS FOR THE JUDGE, PROSECUTOR AND VICTIMS, DEVELOPED FOR USE WITH HIS CLASSES AT COLUMBIA LAW SCHOOL AND THE HAGUE INTERNATIONAL CRIMINAL LAW NETWORK, WERE UTILIZED AS THE MOOT PROBLEM FOR THE COMPETITION.

Pace Law School International Criminal Court Moot 2005

Facts:

1. In September 2001, after four years of continuous fighting in Vineland between the central government and three ethnic groups from the southern and northern regions seeking independence, all the parties to the conflict signed a peace agreement. The parties agreed to form a democratic, coalition government whose power would be shared by all the ethnic groups in the country. In January 2002, the Security Council authorized UNVINE to deploy 500 military personnel and 600 civilian personnel to Vineland to verify cessation of hostilities, to set up a security zone for civilians and refugees, and to make preparations for the forthcoming elections in the various regions. The Secretary-General was requested to invite member States to contribute forces, civilian personnel and equipment to UNVINE in order to carry out the mandate. Member States Katonia and Ridgeland both committed and deployed soldiers and paratroopers to the UNVINE mission in Vineland.
2. In June 2002, the ANVA, an insurgent group from the northern region, broke away from the coalition government due to dissatisfaction over the number of ANVA seats in the new government and over its oil revenue shares from oil deposits in the northern region.
3. Meanwhile at the United Nations, the Security Council was considering the renewal of its peacekeeping mission in Bosnia-land. In that context, the Katonia representative warned the Security Council that it would not participate in this or other

UN peacekeeping missions unless the Council granted it soldiers immunity from prosecution by the International Criminal Court (ICC). They feared others might use the new Court for political reasons to investigate or prosecute its soldiers. In late June, Katonia vetoed a draft renewing the UN peacekeeping mission in Bosnialand but agreed to extend the deadline for 15 days pending further negotiation on the question of exemption of its soldiers from ICC jurisdiction.

4. On 1 July 2002, the Statute of the ICC entered into force between the States Parties to the Statute and empowered the Court to prosecute and punish persons who committed genocide, war crimes, or crimes against humanity in the territory of the States Parties where the competent national courts are either “unwilling” or “not available” to exercise their jurisdiction. Since then, more than 85 states (including Vineland) have become Parties to the Statute, accepting jurisdiction of the Court in accordance with the Statute and in particular the principle of complementarity.

5. On 10 July 2002, unidentified armed groups in Vineland attacked UNVINE peacekeeping forces stationed outside Bridgetown in the northern region. Ten Katonia soldiers and 15 Ridgeland paratroopers were killed. Newspapers in neighboring countries reported that the attack was paid for by “foreign oil companies interested in keeping the UN peacekeepers out of the region.”

6. Katonia and Ridgeland decided to send an additional 200 paratroopers to assist their soldiers and launched, in retaliation, a ten-day aerial bombing of the general area of the attacks. In addition paratroopers from Katonia and Ridgeland cordoned off the surrounding areas and conducted house-to-house raids detaining approximately 50 men and 20 boys. These detainees were taken to a detention compound where they were observed in order to determine if there were any insurgents amongst them. Four of the men were tortured in an isolated area of the camp where there were no civilian witnesses. One of the tortured men died (the cause of death was later determined to be a heart attack). According to reports from reputable non-governmental organizations (NGOs), several ANVA training camps were destroyed and many insurgents killed. Thousands of acres

of farmland were ruined; large quantities of crops and livestock were also destroyed. Numerous unexploded bombs lined the roadsides and the fields. After the Katonia and Ridgeland paratroopers removed the cordon and left the area, many families complained to representatives of various NGO's that personal property had been stolen by the paratroopers while conducting the house-to-house searches.

7. On 12 July 2002, the Security Council adopted unanimously resolution 1234 (2002) that effectively gave a twelve-month exemption from prosecution by the ICC to Vineland peacekeepers taking part in UN peacekeeping operations. The operative part of the resolution reads:

The Security Council

“Acting under Chapter VII of the Charter of the United Nations,

1. Requests consistent with the provisions of article 16 of the Rome Statute that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decide otherwise;

2. Expresses the intention to renew the request in paragraph 1 under the same conditions each 1 July for further twelve-month periods for as long as may be necessary.

8. Many States Parties to the Rome Statute considered this concession to Katonia a political necessity in order to preserve UN peacekeeping missions and to avoid a showdown with Katonia, which was prepared to veto all future peacekeeping operations. They believed, however, that the resolution modified article 16 of the Rome Statute and was inconsistent with the Statute.

9. Consistent with its policy to prevent its soldiers from falling under ICC jurisdiction, Katonia concluded what it called “Article 98 Agreements” with nations in various regions of the world, including Vineland and Ridgeland. In these bilateral agreements, the parties concerned agreed that Katonia’s soldiers would not be surrendered to the ICC without Katonia’s consent.

10. On 20 July 2002, acting on Vineland government intelligence reports, Katonia and Ridgeland ordered their paratroop-

ers to bomb ANVA headquarters. Two days later, the Human Rights Monitors (HRM), an NGO, reported that this bombing had in fact destroyed three villages, killing three hundred civilians, including women and children, and seriously injuring 550 more.

11. On the same day, ANVA captured three Katonia and two Ridgeland pilots whose planes had encountered engine trouble and landed in a nearby marsh. It was believed that these pilots had engaged in the bombing missions that had resulted in civilian fatalities. Soon after the bombing ended, approximately 100 individuals stormed a local police station where it was known that four Ridgeland military police, who had taken part in the earlier house-to-house searches, were stationed as trainers and consultants to the local police force.

a. The four Ridgeland military police officers were recognized by several women in the mob who accused them of having taken their husbands and sons. The four were overwhelmed by the mob and taken prisoner.

b. These four Ridgeland soldiers were later handed over to the ANVA insurgents who had just captured the five pilots accused of the aerial bombing raids.

12. Some ANVA members wanted to execute the captured pilots and military police officers immediately. HRM persuaded the ANVA leaders that an ANVA military tribunal should try the captives for the crimes they had committed. Katonia and Ridgeland issued strong warnings to ANVA that they would face further military action if the captives were not released immediately. To de-escalate an explosive situation, the Secretary-General of the UN sent his special representative (SRSG) to negotiate with ANVA. The SRSG proposed two alternatives to the ANVA tribunal; try the pilots in a neutral third country or in the ICC at The Hague.

13. There were serious political and legal difficulties in finding a third country that was acceptable to ANVA and at the same time willing to try the captured soldiers. Meanwhile, Katonia and Ridgeland continued to threaten immediate military reprisals. To prevent imminent attack, ANVA reluctantly accepted to surrender the accused to the ICC at The Hague in October 2003, through the offices of the Secretary General. Neither

Katonia nor Ridgeland made any statement or announcement on the surrender. Vineland issued an official statement that it had no intention to exercise jurisdiction over the accused.

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Agreement

between the Government of Katonia and the Government of Vineland regarding the surrender of persons to the International Criminal Court

The Government of Katonia and the Government of Vineland, hereinafter, "the parties."

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

Recalling that the Rome Statute of the International Criminal Court done at Rome on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court is intended to complement and not supplant national criminal jurisdiction,

Considering that Vineland, by becoming a State Party to the Rome Statute of the International Criminal Court, has expressed its commitment to be bound by the rules and principles embodied therein,

Considering that the Government of Katonia has expressed its intention to investigate and to prosecute where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by officials, employees, military personnel or other nationals of Katonia,

Bearing in mind Article 98 of the Rome Statute of the International Criminal Court;

Hereby agree as follows:

Article 1

For purposes of this agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party,

Article 2

Persons of one party present in the territory of the other shall not, absent expressed consent of the first Party,

(a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

(b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

Article 3

When the Government of Katonia extradites, surrenders, or other wise transfers a person of the other Party to a third country, Katonia will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent expressed consent of the Government of Vineland.

Article 4

When the Government of Vineland extradites, surrenders, or other wise transfers a person of the other Party to a third country, Katonia will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent expressed consent of the Government of Katonia.

Article 5

This agreement shall enter into force upon exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force. It will remain in force until one year after the date on which one Party notifies the other of its intent to terminate this Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

Done in Vineland, in duplicate, this first day of August, 2002 in the Katonia and Vineland languages, each text being equally authentic. In case of disputes, the Katonia version of this agreement will prevail.

IN WITNESS WHEREOF the undersigned, being duly authorized by the respective Governments, having signed this Agreement

/S/

For the Government of
Katonia

/S/

For the Government of
Vineland

UNITED NATIONS

Distr.
GENERAL

S/RES/1234 (2002)
12 July 2002

RESOLUTION 1234 (2002)

Adopted by the Security Council at its 4046th meeting,
on 12 July 2002

The Security Council,

Recalling the statement of its President of 12 February 1999 (S/PRST/1999/6),

Having considered the report of the Secretary-General of 8 September 1999 (S/1999/957) submitted to the Security Council in accordance with the above-mentioned statement,

Taking note of the reports of the Secretary-General of 13 April 1998 on the "Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa" (S/1998/318) and 22 September 1998 on the "Protection for Humanitarian Assistance to Refugees and Others in Conflict Situations" (S/1998/

883), in particular their analysis related to the protection of civilians,

Noting that civilians account for the vast majority of casualties in armed conflicts and are increasingly targeted by combatants and armed elements, gravely concerned by the hardships borne by civilians during armed conflict, in particular as a result of acts of violence directed against them, especially women, children and other vulnerable groups, including refugees and internally displaced persons, and recognizing the consequent impact this will have on durable peace, reconciliation and development,

Bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and underlining the importance of taking measures aimed at conflict prevention and resolution,

Stressing the need to address the causes of armed conflict in a comprehensive manner in order to enhance the protection of civilians on a long-term basis, including by promoting economic growth, poverty eradication, sustainable development, national reconciliation, good governance, democracy, the rule of law and respect for and protection of human rights,

Expressing its deep concern at the erosion in respect for international humanitarian, human rights and refugee law and principles during armed conflict, in particular deliberate acts of violence against all those protected under such law, and expressing also its concern at the denial of safe and unimpeded access to people in need,

Underlining the importance of the widest possible dissemination of international humanitarian, human rights and refugee law and of relevant training for, inter alia, civilian police, armed forces, members of the judicial and legal professions, civil society and personnel of international and regional organizations,

Recalling the statement of its President of 8 July 1999 (S/PRST/1999/21), and emphasizing its call for the inclusion, as appropriate, within specific peace agreements and, on a case-by-case basis, within United Nations peacekeeping mandates, of clear terms for the disarmament, demobilization and reintegration of

ex-combatants, including the safe and timely disposal of arms and ammunition,

1. Welcomes the report of the Secretary-General of 8 September 1999, and takes note of the comprehensive recommendations contained therein;

2. Emphasizes the importance of preventing conflicts which could endanger international peace and security and, in this context, highlights the importance of implementing appropriate preventive measures to resolve conflicts, including the use of United Nations and other dispute settlement mechanisms and of preventive military and civilian deployments, in accordance with the relevant provisions of the Charter of the United Nations, resolutions of the Security Council and relevant international instruments;

3. Urges all parties concerned to comply strictly with their obligations under international humanitarian, human rights and refugee law, in particular those contained in the Hague Conventions of 1899 and 1907 and in the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as with the decisions of the Security Council;

4. Calls on States which have not already done so to consider ratifying the major instruments of international humanitarian, human rights and refugee law, and to take appropriate legislative, judicial and administrative measures to implement these instruments domestically, drawing on technical assistance, as appropriate, from relevant international organizations including the International Committee of the Red Cross and United Nations bodies;

5. Emphasizes the responsibility of States to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of international humanitarian law, affirms the possibility, to this end, of using the International Fact-Finding Commission established by Article 90 of the First Additional Protocol to the Geneva Conventions, reaffirms the importance of the work being done by the ad hoc Tribunals for the former Yugoslavia and Rwanda, stresses the obligation of all States to cooperate fully with the Tribunals, and acknowledges the historic significance of the adoption of the Rome Stat-

ute of the International Criminal Court which is open for signature and ratification by States;

6. Underlines the importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict, including refugees and internally displaced persons, and the protection of humanitarian assistance to them, and recalls in this regard the statements of its President of 19 June 1997 (S/PRST/1997/34) and 29 September 1998 (S/PRST/1998/30);

7. Emphasizes the need for combatants to ensure the safety, security and freedom of movement of United Nations and associated personnel, as well as personnel of international humanitarian organizations, and recalls in this regard the statements of its President of 12 March 1997 (S/PRST/1997/13) and 29 September 1998;

8. Expresses its willingness to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed, including through the consideration of appropriate measures at the Council's disposal in accordance with the Charter of the United Nations, and notes, in that regard, the relevant recommendations contained in the report of the Secretary-General;

9. Expresses its willingness to consider how peacekeeping mandates might better address the negative impact of armed conflict on civilians;

10. Expresses its support for the inclusion, where appropriate, in peace agreements and mandates of United Nations peacekeeping missions, of specific and adequate measures for the disarmament, demobilization and reintegration of ex-combatants, with special attention given to the demobilization and reintegration of child soldiers, as well as clear and detailed arrangements for the destruction of surplus arms and ammunition and, in this regard, recalls the statement of its President of 8 July 1999;

11. Notes the importance of including in the mandates of peace-making, peacekeeping and peace-building operations special protection and assistance provisions for groups requiring particular attention, including women and children;

12. Requests the Secretary-General to ensure that United Nations personnel involved in peacemaking, peacekeeping and peace-building activities have appropriate training in international humanitarian, human rights and refugee law, including child and gender-related provisions, negotiation and communication skills, cultural awareness and civilian-military coordination, and urges States and relevant international and regional organizations to ensure that appropriate training is included in their programmes for personnel involved in similar activities;

13. Underlines the importance of civilian police as a component of peacekeeping operations, recognizes the role of police in assuring the safety and well-being of civilians and, in this regard, acknowledges the need to enhance the capacity of the United Nations for the rapid deployment of qualified and well-trained civilian police;

14. Reaffirms its readiness, whenever measures are adopted under Article 41 of the Charter of the United Nations, to give consideration to their impact on the civilian population, bearing in mind the needs of children, in order to consider appropriate humanitarian exemptions;

15. Notes that the excessive accumulation and destabilizing effect of small arms and light weapons pose a considerable impediment to the provision of humanitarian assistance and have a potential to exacerbate and prolong conflicts, endanger the lives of civilians and undermine security and the confidence required for a return to peace and stability;

16. Takes note of the entry into force of the Convention on the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction of 1997 and the amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980, recalls the relevant provisions contained therein, and notes the beneficial effect that their implementation will have on the safety of civilians;

17. Reiterates its grave concern at the harmful and widespread impact of armed conflict on children, recalls its resolution 1261

(1999) of 25 August 1999, and reaffirms the recommendations contained therein;

18. Stresses the importance of consultation and cooperation between the United Nations, the International Committee of the Red Cross and other relevant organizations, including regional organizations, on follow-up to the report of the Secretary-General and encourages the Secretary-General to continue consultations on this subject and to take concrete actions aimed at enhancing the capacity of the United Nations to improve the protection of civilians in armed conflict;

19. Expresses its willingness also to work in cooperation with regional organizations to examine how these bodies might better enhance the protection of civilians in armed conflict;

20. Decides to establish immediately an appropriate mechanism to review further the recommendations contained in the report of the Secretary-General and to consider appropriate steps by April 2000 in accordance with its responsibilities under the Charter of the United Nations;

21. Requests consistent with the provisions of article 16 of the Rome Statute that the ICC, if a case arises involving current or former officials or personnel from a Contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decide otherwise;

22. Expresses the intention to renew the request in paragraph 1 under the same conditions each 1 July for further 12-month periods for as long as may be necessary.

23. Decides to remain actively seized of the matter.