

## Problem 2005

### 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 Bosnialand. 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 its 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

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

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 otherwise 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

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



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 peacemaking, 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.