

## **A CASE BEFORE THE INTERNATIONAL CRIMINAL COURT**

### **FACTS**

1. In August 1999, the European nation of Albilion signed and ratified the Rome Statute, becoming a State Party to the ICC. Albilionese Prime Minister, Nathaniel Essex, had been a long-standing proponent of the International Criminal Court and strongly endorsed Albilion's involvement in the ICC.
2. In November 2002, elections were held for Prime Minister in Albilion and the Commerce Secretary, William Eiling, defeated Prime Minister Essex. Eiling had long opposed Albilion's involvement in the ICC.
3. In January 2003, days after he had taken office, Prime Minister Eiling had announced that he had resolved to "unsign" the Rome Statute creating the International Criminal Court (ICC). The Eiling administration cited fears of having an international body having jurisdiction over Albilion nationals and having cases brought against Albilionese civilian and military authorities on political grounds.
4. In March 2003, under pressure from Prime Minister Eiling, the Albilionese Parliament passed the Albilionese Citizenry Protection Act (ACPA). The Act authorized the use of military force to liberate any Albilionese citizen or citizen of an Albilionese-allied country being held by the ICC. In addition, the Act provided for the withdrawal of Albilionese military assistance from countries ratifying the ICC treaty, and restricted Albilionese participation in United Nations peacekeeping unless Albilion obtained immunity from prosecution by the ICC. However, the Act included a waiver clause that allowed the Prime Minister to waive any of these provisions in the interests of national security.
5. In April 2003, Albilion began seeking agreements with other countries not to surrender or transfer Albilionese nationals to the ICC and threatened to withdraw military aid for countries that would not guarantee Albilionese immunity from prosecution by the ICC. Succumbing to pressure from the Albilionese government, the United Nations Security Council agreed on resolution 2214, which exempted peacekeepers from prosecution. Critics of resolution 2214 described it as "unlawful" because they felt the resolution undermined the ICC, which they argued was an international treaty. On April 21, 2003, Amnesty World Wide, the leading organization that monitors international human rights abuses, released a statement publicly condemning resolution 2214.
6. On March 17, 2005, Albilion was a victim of a devastating terrorist attack. Eighteen underground railway stations were bombed in the nation's capital of St. Rache, by rogue members of the Tiernan Republican Army (TRA). Tierna, a small nation on the southern border of Albilion, had been occupied by Albilion since the end of World War I. Since that time, Tiernans have been fighting for their independence from the Albilionese government. Dubbed "Bloody Thursday" by the international media, the terrorist attack on Albilion resulted in the

deaths of 6666 Albilionese citizens. In a televised address to the Albilionese people on the day following the attack, Prime Minister Eiling vowed that the masterminds behind the attacks would be brought to justice “by any means necessary.” Denying any responsibility for the attack, TRA leader Eamon Pat Coogan stated that the bombings were perpetrated by a rogue extremist faction of the TRA and that the TRA was committed to bringing “these murderers to justice for their heinous and cowardly attacks on the Albilionese people.” Coogan also stated, that while the TRA was “at war with the Albilionese government and the Albilionese army and will remain so, until all Albilionese troops have withdrawn from Tierna,” it would honor the sanctity of the Geneva Convention.

7. Prior to Bloody Thursday, Albilion had been a haven for international commerce and was the European headquarters for numerous international corporations. However, the terrorist attacks led to a wide spread panic amongst the international community that further terrorist attacks would take place. Because of this panic, several corporations moved their European corporate headquarters from Albilion to other nations throughout Europe over the course of the 6 months following the terrorist attacks. This completely destabilized the Albilionese economy. Overnight, the national unemployment rate rocketed to 41%. Over the next several months, rioting broke out amongst the population, resulting in the deaths of thousands of Albilionese citizens and forcing the Albilionese to declare an indefinite state of martial law on January 18, 2006.

8. Since March 2005, in its efforts to track down the architects of Bloody Thursday, the Albilionese government effectively doubled the number of its military personnel in Tierna. Over the course of the several months, the Albilion military launched a campaign against the Tiernan people to discover the identities of the masterminds of Bloody Thursday. This campaign consisted of a policy of random interrogation and internment without trial of Tiernan citizens as well as increased military checkpoints through out the Tiernan countryside. Often, the poor intelligence reporting procedures of the Albilionese military resulted in the wrongful detainment of innocent Tiernans. Moreover, Amnesty World Wide reported numerous instances of abuse and torture of detainees by Albilionese military personnel. The brutal nature of these tactics by the Albilionese military resulted in the TRA gaining widespread support and popularity amongst Tiernans.

9. In March 2006, because of the conditions in neighboring Albilion and its newly found widespread support amongst the Tiernan people, the TRA was able to lead the Tiernan population in a successful guerrilla war campaign against the Albilionese military. After months of fighting, all surviving Albilionese soldiers were immediately arrested and imprisoned. In a televised address to the International community, the Albilionese Prime Minister declared that the nation of Albilion “would not tolerate this mutiny by Tierna” and demanded the safe return of all Albilionese soldiers “held hostage by the TRA.”

10. In April 2006, angry over the current domestic problems in Albilion and feeling that it was his ineffective leadership that resulted in the Tiernan “mutiny”, the Albilionese people voted to recall Prime Minister Eiling. In July 2006, new elections were held resulting in Nathaniel Essex being reelected as Prime Minister of Albilion. In an effort to mend relationships with various members of the international community, Prime Minister Essex pressured parliament to rescind the ACPA as well any agreements with other countries not to surrender or transfer Albilionese

nationals to the ICC.

11. In May 2006, free elections were held in Tierna for the first time in over eighty-five years, resulting in the election of former TRA leader Eamon Pat Coogan as Prime Minister.

12. On August 28, 2006, three Tiernan nationals and confirmed TRA members, Henry Lynch, Thomas Dane, and Jackson Cray were arrested in St. Rache by the Albilionese Constabulary for suspicion of involvement in the Bloody Thursday bombings. After six days of interrogation Lynch, Dane, and Cray confessed to being the masterminds of Bloody Thursday.

13. On September 3, 2006, the day after the complete and total collapse of the Albilionese economy, a wave of anti-government rioting and undirected violence swept across the country. The increased military presence in Tierna and the subsequent guerilla war with the TRA completely overwhelmed the already unstable Albilionese economy resulting in its complete breakdown.

14. On September 8, 2006, realizing that the Albilionese Army and Albilionese Constabulary would be unable to contain the violence, Prime Minister Essex formally requested UN intervention. Additionally, Prime Minister Essex formally referred the prosecution of Lynch, Dane, and Cray to the Office of the Prosecutor of the ICC. Lynch, Dane, and Cray were surrendered to The Hague on September 10.

15. On October 2, 2006, a coalition of military personnel led by UN Peacekeepers was sent into Albilion to aid local military forces in containing the sectarian violence that had erupted throughout the country which culminated in the firebombing and destruction of Capitol Hall, the home of the Albilionese Parliament, and the assassination of Prime Minister Essex.

16. In December 2006, after 67 days of armed military conflict, UN Peacekeeper's were finally able to contain the violence and rioting in Albilion. Realizing that the violence and rioting had annihilated the existing forms of infrastructure and support for the Albilionese people, the UN Security Council sanctioned the deployment of additional troops and non-military personnel to establish a provisional government.

17. In February 2007, after an initial investigation, the ICC prosecutor, based upon the jurisdiction of crimes arising in an international conflict in the territory of a signatory state, charged the Lynch, Dane, and Cray with:

- (i) Crimes against humanity of murder (Article 7(1)(a));
- (ii) War crimes of willful killing (Article 8(2)(a)(i));
- (iii) War crimes of attacking civilians (Article 8(2)(b)(i) or 8(2)(e)(i));
- (iv) War crimes of excessive incidental death, injury or damage (Article 8(2)(b)(iv));
- (v) War crimes of murder (Article 8(2) c (i)-1).

18. In early March 2007, representatives of the newly established Tiernan government appeared before the Court, challenging ICC's jurisdiction over the TRA officers. The Tiernan officials argued that the ICC lacked jurisdiction because Albilion had "unsigned" the Rome Statute and was no longer a party to the ICC when the events of Bloody Thursday transpired and that

consequently, the Court lacked jurisdiction.

19. Immediately after this, advocates for the surviving family members of the 6666 victims of Bloody Thursday appeared before the ICC challenging the Prime Minister Coogan's petition. The advocates argued that because of the history between the Albilionese and Tiernan peoples, it would be impossible for Lynch, Dane, and Cray to be brought to justice in a Tiernan court. They requested that the case remain under the jurisdiction of the ICC. Advocates for the victims also argued that there was no way the victims could be compensated for their losses by any court other than the ICC as Tierna was itself still recovering from eighty years occupation and would not be able to adequately try Lynch, Dane, and Cray.

20. In late March 2007, Prime Minister Coogan, in an effort to aide Albilion in its recovery, ordered the immediate release and return of all interred Albilionese military personnel in Tierna.

## **THE EXERCISE**

Arguments before an ICC hearing under Article 19 of the Rome Statute

The Prosecutor is challenging Tierna's petition seeking to have the ICC reverse its original decision to investigate and prosecute the case and relinquish the matter to the national courts of Tierna.

1. The defendants and victims and families of victims have all invoked their right to participate in the proceedings and to be represented by counsel.

2. The central issues are:

- (i) Issues of admissibility under Article 17
- (ii) Preliminary rulings of admissibility under Article 18;
- (iii) Challenges to the jurisdiction of the Court or the admissibility of a case under Article 19.

## **BRIEFING MATERIALS:**

1. The Rome Statute, Rules of Procedure and Evidence.

### **Security Council**

#### **Resolution 2214 (2003)**

**Adopted by the Security Council at its 6666 meeting, on 14 April 2003**

The Security Council,

Taking note of the entry into force on 1 July 2002, of the Statute of the International Criminal Court (ICC), done at Rome 17 July 1998 (the Rome Statute),

Emphasizing the importance to international peace and security of United Nations operations,

Noting that not all States are parties to the Rome Statute,

Noting that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,

Noting that States not Party to the Rome Statute will continue to fulfill their responsibilities in their national jurisdictions in relation to international crimes,

Determining that operations established or authorized by the United Nations Security Council are deployed to maintain or restore international peace and security,

Determining further that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the United Nations 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 May 2003 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise;
2. Expresses the intention to renew the request in paragraph 1 under the same conditions each 1 May for further 12-month periods for as long as may be necessary;
3. Decides that Member States shall take no action inconsistent with paragraph 1 and with their international obligations;
4. Decides to remain seized of the matter.

## **AMNESTY WORLD WIDE IMMUNITY FOR PEACEKEEPERS IS A SET BACK FOR INTERNATIONAL JUSTICE: PUBLIC STATEMENT**

April 21, 2003 – (Amnesty World Wide) Amnesty World Wide is dismayed at the unlawful decision by all members of the Security Council to oblige the International Criminal Court (ICC)

that seeks to exempt peacekeepers from prosecution. The Council acted on proposals initially introduced by Albilion, which opposes the ICC.

What the Security Council has done is to attempt to amend a treaty agreed between state parties, a power in this case only given to the Assembly of States Parties. Moreover, the Council is exceeding its powers by seeking to amend a treaty which is fully consistent with the UN Charter. In addition, by invoking Chapter VII of the UN Charter, the Security Council has wrongly characterized the US threat to veto peacekeeping operations as either a threat to peace, a breach of peace, or an act of aggression. None of those terms apply to a court created to establish accountability for the worst possible crimes under international law.

The nation of Albilion put much pressure on the other members of the Security Council to do what the majority of UN member states unequivocally oppose. Investigations and prosecutions for the gravest crimes should never be obstructed, nor should double standards ever be created for peacekeepers or anyone else.

Security Council Resolution 2214 seeks to undermine the Rome Statute. Although the resolution's text uses words close to those in Article 16 of the Rome Statute, they are nothing but a smokescreen. The resolution still contravenes the letter, the spirit and the drafting history of that article - the inclusion of which Amnesty International strongly opposed. Article 16 provides for Security Council deferrals only in exceptional circumstances involving Security Council negotiations about the ending of threats to or breaches of international peace and security or aggression and on a temporary, case by case basis.

The changes made after weeks of wrangling in the Security Council when Albilionese held approval of peacekeeping operations hostage as long as its demands for exemption were not met, are without substance. The resolution still attempts to prevent the ICC from investigating or prosecuting a case of a national of a non-state party to the Rome Statute who participates in a UN operation for genocide, crimes against humanity or war crimes, unless the powers represented in the Security Council decide otherwise. By attempting to block countries who are party to the treaty from fulfilling their legal obligations, for a renewable period of one year, resolution 2214 strikes at the heart of the principles of justice embodied in the ICC.

Amnesty World Wide applauds the resolve of the many countries not on the Security Council who have spoken out strongly in defense of the integrity of the Rome Statute and urges them to press the Security Council not to renew the resolution next year which attempts to grant Albilionese nationals immunity from investigation and prosecution for genocide, crimes against humanity, and war crimes in the ICC.

**AMNESTY WORLD WIDE  
HUMAN RIGHTS CONCERNS IN TIERNA  
REPORT TO THE OFFICE OF THE PROSECUTOR  
INTERNATIONAL CRIMINAL COURT**

Since March 2005, in its efforts to track down the architects of Bloody Thursday, the Albilionese

government has committed scores of human rights abuses in the nation of Albilion. Systematic human rights abuses have occurred, including killing, torture, rape, looting and destroying of property by Albilionese military personnel stationed in Tierna. Tens of thousands of Tiernan citizens have been imprisoned without trial based on the belief that they may have knowledge that could lead to the capture of the masterminds of the March 17, 2005, terrorist attack on Albilion. Additionally, since the deployment of additional Albilionese troops in Tierna, food is scarce and sanitary conditions poor.

The Albilionese government has placed impediments and restrictions on access for humanitarian aid agencies in both Albilion and Tierna as well. Aid providers are subject to untenable visa restrictions, organizations are limited in what materials they may use, and all aid providers are subject to arbitrary rule making by the Albilionese government. Aid organization's face their biggest challenge in attempting to operate in the insecurity in both Albilion and Tierna. Aid providers have had food, equipment, and other materials seized by Albilionese military personnel. These aid organizations are struggling to operate in these conditions with frequent temporary suspension of activities. The result is a humanitarian crisis, with some vulnerable populations completely cut-off from aid, and others subject to interruptions of vital support.

The Albilionese government is unwilling to address the human rights abuses in Tierna and has not taken the steps necessary to curtail the activities of its soldiers stationed there. The International Criminal Court should take the first step in ending impunity in Tierna by launching investigations into human rights violations against Albilionese soldiers stationed in Tierna. The Albilionese government has refused to cooperate with the investigations, and international support for ICC activities in Tierna is necessary if impunity is to be addressed.