

JUR5570 - International Criminal Law

Spring 2008

Please answer both questions below:

Question 1:

The ICC Prosecutor considers investigating alleged war crimes in the territory of Tarinia, a state party to the Rome Statute. As the Prosecutor's legal advisor, you are asked to assess whether the cases against the following individuals will be admissible:

- a) suspect A has been charged with a war crime under Tarinian law but has fled to another state with which Tarinia has no extradition agreement;
- b) suspect B has been investigated in Tarinia but was not charged, as the evidence was considered insufficient to ensure a conviction;
- c) suspect C has been convicted by a Tarinian special military tribunal but was given an unusually light sentence.

Question 2:

In one of the subsequent trials before the ICC Trial Chamber, the accused, Corporal Brody, explained the following:

“At 19:00 our commander gave the order to attack the village. According to an intelligence report, a group of enemy soldiers were hiding there, preparing an attack on a vital supply convoy that we were expecting the next day. The attack lasted for 40 confusing minutes. When we entered the village, we were shocked to learn that all the casualties, as well as the survivors, were civilians. Our commander now seemed rather desperate and ordered the execution of the remaining civilian men. I first refused to participate in the execution but was told: “If you prefer, you can give your rifle to one of your fellow soldiers and join the villagers instead.” So I joined the firing squad. I am absolutely convinced that had I not carried out the order, I would have ended my life in that ditch. Five days earlier I had witnessed another soldier being shot after he refused to obey a similar order. And the villagers would have been killed anyway, you know.”

Assuming that Corporal Brody is honest in his description of the events, discuss whether superior orders or duress can be raised successfully.