

JUR5570 - International Criminal Law

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The state Begonia was inhabited by two ethnic groups, the Majorians who constituted 90 % of the total population, and the Minorians, who constituted 10 % of the total population. For centuries there had been tensions between the two groups, but over the last 20 years the Majorians and the Minorians had managed to live peacefully side by side.

On May 1st 2010, the right-wing politician Eric Grotius won the election. There were rumors that he had won by manipulating the election, but this was never investigated by the police or any other instance. On his first day in office, President Grotius notified the United Nations Secretary-General that Begonia withdrew from the Rome Statute of the International Criminal Court (ICC), which it had ratified on January 1st 2005.

During his election campaign, Grotius had made hateful speeches against the Minorians. On April 15th 2011, Grotius gathered the top ten generals of the state and involved them in his plans to exterminate the Minorians once and for all. Eight generals said they would join in Grotius' genocidal plan, while two generals of Minorian ethnicity, said they could not go against their own people. The two generals were immediately shot by the President.

The day after, Grotius and his eight loyal generals embarked on a massive campaign against the Minorians, by the end of which close to 20.000 Minorians would be killed. The situation was quickly put on the agenda of the Security Council, and on May 15th, the Council adopted a resolution authorizing states to "stop the genocidal acts in Begonia by the use of all necessary means". As Begonia was no longer a party to the Rome Statute of the ICC, the resolution also instructed Begonia to "cooperate fully" with the ICC, referring to article 13 (b) of the Rome Statute. The United States abstained from voting over the resolution.

One week later, UN troops entered Begonia and marched toward the capital, Georgina. On May 25th, the troops had gained control over Georgina and arrested President Grotius and his eight generals. Grotius and the generals were subsequently handed over to the ICC in The Hague, as the ICC Prosecutor had issued an arrest warrant for them.

On November 1st 2011, the newly established interim government of Begonia informed the ICC Prosecutor that Begonian authorities wished to initiate an investigation of its former president Grotius and his generals with a view to holding them responsible for genocidal acts against the Minorians committed in the period April 16th to May 25th 2011. The new government, which exclusively consisted of Minorians, noted that the state's judiciary was being rebuilt and that "corrupt Majorian judges are being gradually replaced by Minorian judges of high integrity". It should not be doubted, noted the government, that those involved in the genocide would face criminal proceedings that would be both effective and fair.

The ICC Prosecutor feared, however, that Grotius and his generals would not face a fair trial and that there was a risk that they would be sentenced to death after summary proceedings. She therefore sought a ruling

from the Court regarding the admissibility of the said cases. On 1st February 2012, the ICC Trial Chamber decided that the cases were admissible before the ICC. Begonia immediately declared that they challenged the admissibility. They also challenged the jurisdiction of the ICC claiming that the ICC could not derive any jurisdiction from the Security Council resolution because it was invalid. First, the resolution failed to fulfill the procedural criteria in article 27 of the United Nations Charter, as one of the permanent members of the Council had abstained from voting. Second, Begonia argued, the situation in Begonia did not constitute a “threat to the peace, breach of the peace, or act of aggression” according to article 39 of the United Nations Charter.

1. Can the cases be deemed admissible under article 17 of the Rome Statute due to a risk that the proceedings in Begonia will violate the rights of the alleged perpetrators to a fair trial?
2. Is the Security Council resolution adopted in violation of article 27 of the United Nations Charter.
3. Can the ICC assess whether the situation in Begonia qualified as a “threat to the peace, breach of the peace, or act of aggression” in order to determine whether it has jurisdiction over the situation in Begonia.
4. Assuming that the ICC either lacks jurisdiction or that the cases are inadmissible, can the ICC still refuse to surrender the persons to Begonia if it deems that there is a real risk they will be executed there?

On April 1st 2012 the ICC Appeals Chamber decided, rather controversially, that the Security Council resolution was invalid and that therefore the ICC could not exercise any jurisdiction according to that resolution. At the same time the Court noted that “the ICC will still have jurisdiction over some of the alleged crimes”.

5. Explain why the ICC will have jurisdiction over some of the crimes in question, even if the Security Council resolution is considered invalid?