

Problem 2006

Facts:

1. In May 2005, after three years of war and nine years of occupation by the nation of Qurac, the South East Asian country of Razachstan held democratic elections. During the occupation, Quraci forces committed brutal acts against the Razachstani people, especially members of the Marijani caste. Razachstan is a country whose entire social infrastructure is embedded in a caste system, in which the Marijani are considered the "lowest of the low". Prior to the occupation there were at least 500,000 violent crimes committed against Marijanis annually; during the Quraci occupation, that figure tripled.
2. While the Quraci occupation of Razachstan had been strongly condemned by the international community, no action was taken until February 2002 when the brutal and oppressive nature of the Quraci occupation became publicly known. The United Nations under a Security Council Chapter 7 resolution sent its Peacekeepers to lead an international coalition of troops to keep the peace during the negotiations for the withdrawal of Quraci troops. The coalition was comprised of troops from over twenty countries, including Fatar, Qurac's neighbor.
3. On November 12, 2003, a Fatar regiment of twenty-seven soldiers broke away from the coalition due to dissatisfaction with the way the UN Peacekeepers had been conducting the Razachstani mission and marched into the Buchari province of Razachstan, an area almost exclusively inhabited by Marijanis.
4. On December 5, 2004, the UN coalition forces liberated the province of Nadir, the principle base of operations for Quraci forces in Razachstan. On December 12, 2004, General Faraz Kushari, Commander of the Quraci forces, ordered all Quraci forces to cease fire and surrender.
5. On December 31, 2004, a provisional government was established in Razachstan under a UN negotiated accord that would govern until the democratic elections could be held.
6. On January 1, 2005, the Statute of the ICC entered into force pursuant to Razachstan's having signed on to the Rome Statute prior to its occupation. (Razachstan's status as a signatory state is not contested) in Razachstan and empowered the Court to prosecute and punish persons who committed genocide, war crimes, or crimes against humanity in Razachstan where the competent national courts are either "unwilling" or "not available" to exercise their jurisdiction.
7. In February 2005, during a survey mission in the Buchari province, UN coalition forces that remained in Razachstan under UN authority to monitor this transitional period discovered 27 Fatar troops occupying a Marijani village. The villagers indicated that these Fatar soldiers had been occupying the village for over a year. Upon learning

that the Fatari soldiers had killed 9 men, raped and mutilated 17 women, and tortured several villagers, the coalition forces immediately arrested the Fatari troops.

8. Some members of the Razachstani provisional government wanted to execute the captured Fatari troops immediately. They were angry that some of their “liberators” had perpetuated such horrors. Khalid Faraz, a member of the interim provisional government and leading candidate for Prime Minister in the upcoming elections, expressed his anger and desire to see the Fatari soldiers tried in Razachstan. However, other members of the provisional government did not consider the soldiers’ crimes so heinous as to warrant execution, especially as the victims had only been Marijanis, a group traditionally treated as second-class citizens in Razachstan. After repeated attempts to contact the Fatari government about the status of these soldiers it was decided that the Fatari government had no intent to exert jurisdiction over these soldiers. During meetings with the provisional government, UN representatives suggested that as a signatory state and because it would be quite some time before Razachstan would have the ability to properly try the Fatari soldiers, they should be tried in the ICC at The Hague . After much discussion and debate within the provisional government, the Fatari soldiers were turned over to the ICC in April 2005.

9. In May 2005, after an initial investigation, the ICC based upon the jurisdiction of crimes arising in an international conflict in the territory of a signatory state, charged the Fatari military officers 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).

10. In early July 2005, shortly after he had been elected Prime Minister, Khalid Faraz, held meetings with ICC prosecutors requesting the immediate return of the Fatari soldiers to Razachstan for trial. Prime Minister Faraz indicated that Razachstan now had a criminal court that could properly try soldiers for war crimes. Further, in an effort to allay the ICC Prosecutor’s concerns, Prime Minister Faraz promised that should the soldiers be found guilty, they would not be executed. In late May 2005, representatives of the Razachstani government filed a petition with the ICC, challenging the ICC’s jurisdiction.

11. Immediately after this, representatives of the Marijani Liberation Front (MLF), a pro Marijani organization, on behalf of the villagers, appeared before the ICC challenging the Prime Minister’s petition. The MLF argued that because Marijanis are a

strongly discriminated against minority in Razachstan, it would be impossible for them to get justice in a Razachstani court and requested that the case remain under ICC jurisdiction.

12. Fearing the idea of being tried in a Razachstani court, representatives of the Fatari government and the Fatari soldiers also appeared before the Court, challenging the Razachstani petition. The soldiers argued that it would be impossible for them to receive a fair and impartial trial in Razachstan nor could they receive a fair trial in Fatari due to international pressure on the Fatari government to make “an example of these soldiers.” Counsels for the soldiers also indicated that prior to the Quraci occupation that the rights of defendants in Razachstan did not meet international standards and that while the death penalty had been eliminated as a potential sentence in this case, the other shortcomings of the Razachstani criminal justice system remained firmly in place. While the government of Fatar was originally opposed to the ICC investigating and prosecuting its soldiers it also felt that the only way the Fatari troops could receive both a fair trial and a punishment that was neither cruel nor unusual was if the case was tried before the ICC.

THE EXERCISE

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

The Prosecutor is not challenging Razachstan’s petition seeking to have the ICC reverse its original decision to investigate and prosecute the case and return the matter to the national courts of Razachstan.

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.