



2017 International Criminal Court

High School Moot Court Competition Problem

Case ICC-04232017

A Case before the International Criminal Court

This is a fictitious case, intended to enable students to familiarize themselves with the law and practice for the ICC. Each two-student team is required to prepare an argument, written and oral, for both issues addressed in either (a) paragraph 28, if their team is representing the Accused, who you will call the “Appellant” in your memorials and arguments, or (b) paragraph 29, if their team is representing the Prosecution, who you will call the “Respondent” in your memorials and arguments.

Facts and Procedural History

1. Borduria is a country of about 4 million people. The third largest city in Borduria is Pallet Town. It is located in the north-eastern part of Borduria. In 2013 a civil war broke out between the Resistance United Army (RUA) and the government of Borduria. After years of enduring a corrupted government the RUA wanted to take over the government and be the ruling party in Borduria. Slaka is a neighboring country to the east. Slaka is ruled by a dictator, James Spence, who is the Accused.
2. The Accused is charged under Count 1 of the Indictment for the shelling of the town square of Pallet Town on April 28, 2015.

3. The RUA was not formally affiliated with Slaka, or any other country. However, several United Nations reports during the conflict in Borduria reflected international monitors' conclusions that Slaka forces under the Accused's direct control were providing assistance to the RUA, including weapons and experienced members of the Slakan Army (the SA) to serve as advisors. Weapons provided by the SA included a large number of M46 130mm guns.
4. Some reports suggested that SA officers had formal command of RUA units, but this was strenuously disputed by Slakan authorities and several international monitoring missions rejected this conclusion.
5. As dictator of Slaka, Spence is the legal commander-in-chief of the SA.
6. United Nations Security Council Resolution 1084 (Resolution 1084) declared six cities of Borduria "safe areas", including Pallet Town. Under Resolution 1084, the cities that were "safe areas" and their surroundings were to be free from all armed attacks and hostile acts and were under UN protection. UN Security Council Resolution 1096 (Resolution 1096), also adopted in 2014, confirmed the status of the safe areas. The six "safe areas" held this status throughout the war.
7. The awareness of the content of Resolutions 1084 and 1096 is not a condition for compliance with them (here, as in some national legal systems, "ignorance of the law is no defense"). However, the Trial Chamber noted that the status of the city of Pallet Town as a "safe area" was widely known throughout the territory of Borduria and the rest of the world. The content of Resolution 1084 and then of Resolution 1096 was known throughout the period of the conflict by public officials, national and international media and all the actors involved in the conflict, including the RUA members and the

inhabitants of Pallet Town. The Trial Chamber therefore concluded that the status of Pallet Town was common knowledge and was certainly available to anyone in the command structure of the RUA.

8. The Trial Chamber was convinced that the Accused, James Spence, was well informed that, following the relevant UN Security Council Resolutions, it was prohibited to launch any attack on Pallet Town and its inhabitants.
9. Despite its special status, Pallet Town was regularly targeted for attack by the RUA. Shells were often fired at the town and its surroundings. For example, the town of Pallet Town and its surroundings, including Pallet Town airbase and the Pallet Town power plant, were often shelled by RUA forces, although those places were all located within the safe area.
10. The repeated targeting of Pallet Town was well known and the subject of regional and international media coverage. On November 11, 2014, a United Nations report recommended sanctions against the RUA for acts including the repeated targeting of civilian areas of Pallet Town. The Trial Chamber accepted that the Accused, James Spence, must have known no later than November 11, 2014 that Pallet Town was a target of RUA shelling despite its special status.
11. Official organs of the Slaka government – including the SA - continued to provide assistance to the RUA after the release of the November 11 report.
12. The Trial Chamber accepted, and the Parties agree, that the RUA and the official Bordurian Army regularly engaged in combat between military forces. The Parties are similarly in agreement that an armed conflict was ongoing in Borduria beginning in 2014 and continuing on and after April 28, 2015.

13. On the day of the incident, April 28, 2015, it was “Youth Day”, a day celebrated throughout Borduria. There were about 500 people who congregated in the town square of Pallet Town to celebrate on an unusually warm spring evening. During the day on April 28, 2015, no explosions were heard in Pallet Town.

14. Pallet Town’s Youth Day celebration was well-known and well-advertised. Due to Pallet Town’s prominence, a number of students and young adults came to Pallet Town from other towns in the area for the celebration.

15. At 8:55 pm on April 28, 2015, an artillery shell landed and exploded on the town square of Pallet Town resulting in the death of 71 persons. More than 130 persons were wounded.

16. In response to the shelling, a mixed expert team made up of local representatives of the government of Borduria and the UN representatives was established whose task was to find all the facts surrounding this event. The local investigative team came to the explosion site at 9:30 pm to conduct the investigation.

17. On April 29, 2015, a joint commission of the local representatives and UN representatives was established. The Commission finished its investigation and on May 2, 2015 completed their report. The report found the following:
 - An M46 130 mm gun was located in the Sleepy Hollow area on Mount Overlook at the relevant time.
 - The distance from Sleepy Hollow to the town square of Pallet Town is around 88,500 feet.
 - The ultimate range of an M46 mm gun if maximum charge is used is greater than 88,500 feet.

- The area of Sleepy Hollow on Mount Overlook was under control of the RUA during the relevant time.
- An M46 gun 130 mm located in Sleepy Hollow on Mount Overlook had been designated for firing at Pallet Town by the order of the RUA even before April 28, 2015.
- An M46 130 mm gun is intended for the bombardment of designated areas and not point targets, as it cannot be aimed with sufficient precision to hit specific targets at a distance.
- A projectile fired from an M46 130 mm gun has high destructive power and a wide lethal zone.
- The SA had provided many M46 130mm guns to the RUA.
- The attack launched on Pallet Town on April 28, 2015 at 8:55 pm was indiscriminate.
- The surrounding area around the Pallet Town town square was entirely civilian in nature.
- The shell landed in the middle of this large area and it was elemental that the target was civilian in nature, even if the specific target could not be proven.

18. The report concluded that the shelling of the town square by the RUA was both an indiscriminate attack and an attack against civilians.

19. In response to the information in the Report, the United Nations Security Council voted unanimously to refer the situation in Borduria to the International Criminal Court (ICC). Borduria has neither signed nor ratified the Rome Statute, and therefore is not a party to the International Criminal Court. A week after the referral, the Prosecutor opened an investigation.

20. On December 15, 2015, the Pre-Trial Chamber issued a warrant of arrest for alleged war crimes during the 2015 Borduria civil war for James Spence.
21. James Spence fled to the neighboring country of Normi where he was granted safe haven. The international community responded to this initial grant of safe haven by threatening to impose economic sanctions on Normi, a country which has signed and ratified the Rome Statute. As it became apparent that Normi would bow to this international pressure, James Spence attempted to cross the border to a neighboring country. He was arrested by Normi military police at the border while making this attempt, and was transferred to this Court.
22. Spence was charged with ordering the commission (within the meaning of Article 25.3(b) of the Rome Statute) of an attack intentionally directed] against a civilian population (within the meaning of Article [8.2.(e)(i)] of the Rome Statute) in the form of the attack on Pallet Town. The Prosecution asserted that he had de jure command over the SA and, on the basis of UN reports, that the SA had de facto command over the RUA.
23. The Trial Chamber found there was no evidence that Spence had ordered the attack. The Trial Chamber also did not find that the SA had de facto command over the RUA.
24. The Trial Chamber did, however, find that 71 people were killed by the shelling. The Chamber found that the fatal shell was fired from RUA territory and found further that it must have been fired by the RUA.
25. Late in the relatively brief Defence case, the Chamber notified the Parties that it would consider re-characterizing the charges under

Regulation 55 to consider whether the Accused was guilty of aiding and abetting (within the meaning of Article 25(3)(c) of the Rome Statute) as well as ordering the crime(s) in question, and whether the Accused was guilty of the crime of murder (within the meaning of Article 8(2)(c)(i) of the Rome Statute). The Chamber suspended the case for two months in order to permit counsel for the Accused to make written submissions on the proposed recharacterization, which were followed by arguments before the Chamber on the proposal. Notwithstanding the Accused's objections to recharacterization, the case then proceeded forward.

26. The Trial Chamber convicted the Accused under the re-characterized charges of having aided and abetted the murder of 71 persons. It reasoned that the Accused was aware the RUA was regularly shelling Pallet Town and, in that knowledge, continued to provide the RUA with heavy weapons and military advisors. The Chamber considered that the SA provided many M46 130mm guns, the precise type of weapon used in the fatal shelling.

27. The Trial Chamber found no evidence that the Accused specifically directed the aid the SA provided to the RUA towards the criminal activities of the RUA, rather than their participation in armed conflict against the Bordurian government. However, the Chamber considered that the Accused (a) was aware of the regular shelling of the protected area of Pallet Town, (b) was aware that such shelling could cause the death of civilians not taking part in the civil war, and (c) was aware of the substantial likelihood that the aid he provided through the SA would facilitate the commission of further crimes by the RUA. The Trial Chamber found that this satisfied the standard for criminal complicity established under Article 25(3)(c) of the Rome Statute.

28. The Accused now appeals. He asks the Appeals Chamber to find:

- (i) The Trial Chamber erroneously re-characterized the charges late in the trial to include a crime, murder, and mode of participation, aiding and abetting, against which the Accused had not known he had to defend himself until a late stage of the Defence case; and
- (ii) The Trial Chamber erred in convicting him of aiding and abetting the crime of murder in the absence of evidence that he had directed the aid he provided the RUA towards criminal, rather than lawful, conduct.

29. The Prosecution asks the Appeals Chamber to find:

- (i) The Trial Chamber acted correctly in recharacterizing the charges during the trial, as the recharacterization did not require the Accused to prove or rebut any fact that was not addressed in connection with the original charges; and
- (ii) The Trial Chamber correctly found that the Accused knowledge of the RUA's activities was sufficient to support his conviction for aiding and abetting the killings during the April 28 shelling attack.

30. The Prosecution does not appeal the Trial Chamber's decision not to convict the Accused of ordering. The Defense does not appeal the Trial Chamber's finding that the RUA committed murder in the April 28 shellings.