

## HYPOTHETICAL CASE

### **BLANCO and others v. Republic of Belor** **(The New Atria Embassy Bombings Case)**

#### **I. Historical Background**

1. New Atria is a vast developing country on the eastern coast of Africa and is a former colony of the Republic of Belor, a prosperous nation situated in the Americas. Belor is one of the founding Member States of the Organization of American States (OAS) and a member of the United Nations. New Atria, which is also a Member State of the United Nations, has been granted Permanent Observer status with the OAS but is not a Member State of the Organization, nor is it a Member State of the African Union.

2. New Atria gained its independence from Belor in 1980 through peaceful negotiations. Since then, the two countries have maintained strong diplomatic, economic and military ties. Indeed, the New Atrian economy has remained highly dependent upon Belor as its main trading partner and principal market for New Atria's agriculture and natural resource-based industries. Belor, as one of the world's major industrial powers, supplies much of New Atria's demand for manufactured, technological as well as military goods. New Atrian nationals have also continued to comprise a significant segment of Belor's population, constituting approximately 15% of Belor's total population of 30 million, because of the countries' shared history and liberal immigration policies.

3. New Atria's population of 12 million inhabitants is composed of several distinct ethnic groups whose connections with the region can be traced back centuries. These include the Drones, the majority group based primarily in the densely-populated central region of the country, who have controlled the executive and legislative branches of government since New Atria's independence in 1980. The Corpions, the second-largest ethnic group, are based primarily in the isolated province of Roveen in the mountainous northwestern region of New Atria. Owing largely to their sizeable population and central location, the Drones played a dominant role in the administration of New Atria during its time as a colony, and as a consequence many of the Drones' traditional cultural and religious practices evolved as its members became more exposed to international influences. In contrast, the Corpions remained largely isolated throughout New Atria's colonial history and therefore retained many of the long-established beliefs and traditions associated with the Corpion religion. However, as the prospects for New Atria's independence grew in the 1970s, the Corpion's political leadership recognized the need to develop stronger relations with the Drones, and consequently, contact between the two groups increased. This resulted in enhanced collaboration and understanding between the Corpions and the Drones, and also gave rise to strong disagreements in certain fundamental areas, including the terms of New Atria's independence.

4. The Drones were the leading force behind negotiations for New Atria's independence and adopted a highly conciliatory approach to negotiations with Belor. The Corpions favored a less compromising strategy in achieving New Atria's sovereignty and its political leaders have remained dissatisfied with the conditions upon which New Atria gained independence from

Belor. Among other grievances, the Corpions have maintained that Belor's wealth was derived from New Atria's natural resources and that Belor should have paid reparations to New Atria for its exploitation as a colony. Since independence, the Corpions have presented candidates for national elections and have participated in other aspects of the political processes in New Atria. At the same time, they have become increasingly resentful of the Drones' majority hold on power, which they claim has resulted from the favoritism that Belor has traditionally shown to the Drones and the close ties between Belor's government and senior members of the Drone leadership.

5. The political tensions and divisions between the Drones and the Corpions have been among the concerns cited by international observers concerning the situation of human rights in New Atria. The U.N. Human Rights Committee, for example, in its comments on New Atria's 2002 report submitted pursuant to Article 40 of the International Covenant on Civil and Political Rights, acknowledged improvements in several human rights areas since the country's ratification of the Covenant in 1981, including reforms to prison conditions and the passage of anti-discrimination legislation. At the same time, the Committee expressed deep concern about the administration of justice in New Atria. In particular, the Committee noted that judges continue to be appointed and promoted directly by the executive branch and that this has led to serious threats of political interference in the work of the judiciary as well as the appointment and promotion of a disproportionate number of Drones in the court system. The Committee noted that this development has exacerbated perceptions on the part of Corpions that they have been excluded from participating effectively in the conduct of public affairs in their country and cannot expect equal and impartial treatment in the judicial system.

6. In 1985, numerous Corpions who favored more radical solutions to their grievances against the Drones formed a militant group known as the Scorpions. The Scorpions ascribed to the view that Belor had corrupted the Drones and their political leaders and had contaminated the sanctity of the Corpions' cultural and religious beliefs and practices. Accordingly, for the Scorpions, the only solution to the Corpions' struggle lay in the eradication of Belor's presence and influence from New Atria's territory and, if necessary, from the international community more broadly. To fulfill this objective and force the Drone-led New Atria government to sever its ties with Belor, the Scorpions began gathering resources for their campaign through the perpetration of common crimes such as robberies and involvement in the drug trade. This was followed by bombings and other acts of violence beginning in the early 1990's and committed against select targets in New Atria, such as public buildings, government installations and the properties of Belor-based corporations. In executing these attacks, the Scorpions operated clandestinely by taking measures to blend in with the general public, and capitalized on the relatively low levels of security in the country and the fear and intimidation that their activities generate among the civilian population. The geographic isolation and rugged terrain of Roveen province facilitated efforts by the Scorpions to smuggle explosives and other weapons across New Atria's border from neighboring countries.

7. In recent years, the Scorpions have amassed considerable economic and military resources through affiliations with similar radical groups outside of New Atria and with the financial support of influential Corpions based in New Atria, Belor and other countries. It is also suspected that some governments in Africa, the Americas, and elsewhere opposed to Belor's

foreign policies may be providing financial and other resources to the Scorpions, although no concrete evidence has surfaced verifying these suspicions. As their power has grown, the Scorpions have utilized increasingly radical and aggressive methods of terrorist violence, including hostage-taking and the deployment of suicide bombers. In 2000 alone, 74 civilians and 21 police officers lost their lives through terrorist attacks attributed to the Scorpions. In this climate, New Atrians have been forced to adjust to increasing anxiety in their day-to-day lives as well as greater restrictions on their civil liberties through enhanced security measures and legislative initiatives that have enhanced the government's ability to monitor its population's activities.

## **II. Context for the Present Problem**

### **A. The New Atria Embassy Bombings and Belor's Response**

8. On June 1, 2001, Belor's embassy in New Atria and the embassies of two other States considered to be allies of Belor were the targets of massive and simultaneous bombings. The explosions were perpetrated in mid-morning, one-day prior to a visit to New Atria by the U.N. Secretary General, apparently in order to maximize the number of officials and staff who would be present preparing for the visit. The embassies' complexes were leveled and the ambassadors of all three countries were killed, together with 317 diplomatic and administrative staff. This was the worst episode of violence since New Atria's independence. That day, the Scorpions issued a statement claiming responsibility for the bombings and warning that "soon, the fires of the battle will burn in the homeland of Belor." At the same time the Scorpion's announcement was released to the media, a car bomb exploded outside of the main stock exchange in Belor's capital of Haladonia, killing 9 people and injuring 23 others.

9. That same afternoon, the Government of Belor condemned the bombings as despicable acts of terrorism, declared that the acts constituted an armed attack by the Scorpions against Belor and its allies, and vowed to crush the Scorpions and their international supporters. The international community likewise expressed shock and dismay at the attacks, and the UN and OAS Secretaries General issued statements condemning the violence and declaring the Organization's solidarity with Belor and New Atria in bringing those responsible to justice.

10. The night following the bombings, New Atria's armed forces stormed Venzaar, a neighborhood in the outskirts of the nation's capital of Kawori, where members of the Scorpions and their supporters were suspected of operating. The forces were met with an armed response by members of the Scorpions and a period of protracted and intense fighting followed. Belor rapidly deployed troops to New Atria to assist in the conflict. The fighting ended after two weeks when the remaining Scorpion members detonated a massive explosion in the center of the neighborhood and escaped. Suspecting that the Scorpions would flee to the province of Roveen, Belor and New Atria each dispatched several army units to secure the province. The army units have remained in Roveen to the present day but have been unable to assert control over the entire mountainous region, and fighting with the Scorpions during this time has been sporadic.

11. In the course of the fighting in Venzaar, members of Belor's armed forces captured 56 individuals, who were immediately sent to an abandoned fortress, known as the "Citadel",

located in a barren desert in New Atria's southern territory. New Atria and Belor entered into a bilateral agreement, according to which New Atria permitted Belor's armed forces to continue to operate in its territory and provided them with immunity from civil or criminal process before New Atria's courts. The agreement also gave Belor "control over the premises and security of the Citadel, as well as the authority to enact, adjudicate and enforce laws for the order and governance of the facility and its inmates." According to the agreement, its terms would remain in effect "until the conflict with the terrorist group known as the Scorpions has ended, unless otherwise agreed by the parties."

12. Initially, the Government of Belor did not disclose any information concerning the prisoners at the Citadel. Following expressions of concern by the International Committee of the Red Cross and other international observers over the status and treatment of the detainees, however, Belor indicated that all of the detainees were nationals of New Atria or other third countries, and included both men and women between the ages of 16 and 63. Belor also declared that all of the detainees constituted unprivileged combatants captured in the course of an armed conflict with the Scorpions and therefore that it was entitled pursuant to the laws of war to hold the detainees until the conflict with the Scorpions and their supporters was ended. Belor also indicated that the detainees were not entitled to the protections under the Third or Fourth Geneva Conventions of 1949 but that it would afford the detainees the basic protections applicable under customary international humanitarian law.

13. Further, Belor announced that, pursuant to the terms of its bilateral agreement with New Atria, it would establish a special tribunal at the Citadel to prosecute those detainees who may be responsible for crimes against humanity, war crimes, or terrorism in connection with the embassy bombings or the subsequent fighting in New Atria. In the Order establishing the tribunal, which was issued by Belor's Cabinet of Ministers on June 27, 2001, the crimes were defined in the following terms:

**Crimes against humanity.** The Tribunal shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation; (e) Imprisonment; (f) Torture; (g) Rape; (h) Persecutions on political, racial and religious grounds; (i) Other inhumane acts.

**War crimes:** The Tribunal shall have the power to prosecute persons responsible for grave breaches of the Geneva Conventions of 12 August 1949, other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, and, in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949.

**Terrorism:** The Tribunal shall have the power to prosecute persons responsible for:

- (a) any act that provokes, creates, or maintains a state of anxiety, alarm, or fear in the population or in a sector thereof;
- (b) any act:
  - (i) against the life, health or personal security of any person; or
  - (ii) against the security of public buildings, roads, or means of communication, power or of transport of any type,

(iii) using arms, explosive materials, or any other means capable of causing damage or grave disturbance of the public peace, international relations, or the security of society;

(c) any act or omission that constitutes a crime under an anti-terrorism treaty to which Belor is a party, including the 1971 Montreal Convention, the 1973 Hostages Convention, the 1973 Internationally Protected Persons Convention, and the 1997 Convention for the Suppression of Terrorist Bombings.

14. The Order also provided that prosecutions would be held before three retired judges from Belor's High Court and that the detainees would be given military defense lawyers assigned by Belor's Minister of National Defense. The maximum punishment available to the tribunal for these crimes would be the death penalty, and an appeal from conviction and sentence would lie to the High Court of Belor. The Order also contained provisions governing the production of testimonial and documentary evidence, the conditions upon which the proceedings could be closed to the public, and the protection of state secrets and other privileged information.

15. On August 13, 2001, without any prior notice, Belor released five detainees from the Citadel, stating only that it no longer considered them to constitute security risks. In subsequent media interviews, the released prisoners admitted their membership in the Scorpions but denied any involvement in the embassy bombings. They also claimed that some of the detainees at the Citadel had not taken part in the fighting in New Atria but were abducted by mistake during Belor's military operations. In addition, the detainees confirmed that they had been interrogated during their imprisonment and described some of the techniques that were used by Belor interrogators. According to the detainees, the interrogators began by offering incentives, such as access to books or particular foods, in exchange for favorable information. Where this approach proved unsuccessful, more coercive techniques were employed, in particular forced standing for two, four or eight-hour intervals, which may in turn be followed by 48 to 72 hours of sleep deprivation. The detainees indicated that they never witnessed any prisoners being physically assaulted by guards or interrogators.

16. Belor dismissed the claims made by the detainees as terrorist propaganda. Nevertheless, it agreed to provide the International Committee of the Red Cross (ICRC) with access to the detainees at the Citadel beginning at the end of August 2001. The details of the ICRC's visits have not been made public, consistent with the Committee's general policy of maintaining the confidentiality of its findings as a precondition to obtaining repeated and unrestricted access to detainees.

## **B. The Passage of the Defense of Freedom Act**

17. In the Republic of Belor, its President, Anna Martin, delivered a televised speech on June 2, 2001 in which she stated that its people "now faced a grave threat to national security and public order striking at the heart of our nation, which will not end until our new terrorist enemies are subdued and eradicated." Citing concerns that the violence that had plagued New Atria would spread to Beloran society, President Martin also announced the urgent enactment of a variety of new laws and regulations through the Defense of Freedom Act.

18. The Defense of Freedom Act was subsequently approved by Belor's Parliament on June 10, 2001 and included the following provisions:

13. (1) Nationals of the countries listed in Schedule I to this Act seeking to enter the Republic of Belor are required to provide the following information upon their arrival to a port of entry:

- (a) official travel and visa documents issued in accordance with the provisions of the Immigration Act 2000;
- (b) record of fingerprint identification, which shall be taken by officials at the point of entry in accordance with the procedures prescribed in the Regulations promulgated pursuant to the provisions of this Act;
- (c) record of photographic identification, which shall be taken by officials at the point of entry in accordance with the procedures prescribed in the Regulations promulgated pursuant to the provisions of this Act;
- (d) ethnic and religious affiliation;
- (e) addresses and itineraries for all locations to be visited in Belor.

(2) Nationals of the countries listed in Schedule I to this Act who, as of the date on which this Act enters into force, are present within the territory of the Republic of Belor must, on or before September 1, 2001, present themselves to the Department of Security and Immigration and provide the following information:

- (a) record of fingerprint identification, which shall be taken by officials at the time of presentation in accordance with the procedures prescribed in the Regulations promulgated pursuant to the provisions of this Act;
- (b) record of photographic identification, which shall be taken by officials at the time of presentation in accordance with the procedures prescribed in the Regulations promulgated pursuant to the provisions of this Act;
- (c) ethnic and religious affiliation;
- (d) address of residence and, where applicable, employment in Belor.

14. All religious establishments listed in Schedule III to this Act must, on or before September 1, 2001, provide to the Department of Security and Immigration the following information:

- (a) the names and addresses of all leaders, administrators, and congregation members;
- (b) financial records of the establishment for the previous five (5) years.

[ . . . ]

17. (1) In circumstances in which a national of a country listed in Schedule I to this Act has been issued a visa or other entry document in accordance with the provisions of the Immigration Act 2000 and fails to comply with the terms of that document, the Department of Security and Immigration may:

- (a) issue a voluntary departure notice to that person requiring that they leave Belor within a time period calculated in accordance with the Regulations promulgated pursuant to the provisions of this Act, following which deportation procedures will be undertaken;
- (b) where there are reasonable grounds to believe that the person is associated with a terrorist organization listed in Schedule II to this Act, apply to the General Court of Belor for an order for the immediate arrest and deportation of the person concerned.

(2) Where an application is made to the General Court in accordance with subparagraph (1)(b), the Court shall grant the order requested upon the presentation of a certificate by the Minister of Security and Immigration verifying the grounds upon which the order is requested, and may, in its

discretion, require the person concerned to be brought before the Court prior to his or her deportation.

(3) No appeal lies from an order issued pursuant to subsection (2).

[ . . . ]

32. (1) In circumstances in which there are reasonable grounds to believe that an individual, corporation or other entity has engaged in financial transactions associated with a terrorist organization listed in Schedule II to this Act, the Minister of Finance may apply to the General Court of Belor for an order:

- (a) authorizing the Minister to monitor, for a specified period, the financial transactions of an identified individual, corporation or other entity; or
- (b) authorizing the Minister to take the measures necessary to seize, freeze or forfeit the financial assets of an individual, corporation or other entity pending further investigation.

(2) Where an application is made to the General Court in accordance with subsection (1), the Court shall grant the order requested upon the presentation of a certificate by the Minister of Finance verifying the grounds upon which the order is requested.

19. Schedule I to the Act contains the names of six countries, including New Atria. Schedule II to the Act contain the names of 14 groups, including the Scorpions. Schedule III contains the names of 43 religious establishments, including all religious temples affiliated with the Corpions. The Regulations promulgated pursuant to the Act provided that fingerprint records would be taken through an electronic fingerprint scanner, and that the photographic record would be taken with a digital camera. The explanatory notes published with the regulations explained that recording the data electronically would permit authorities to compare the information against fingerprint and photographic data stored by the government in a separate anti-terrorism database, and would also permit rapid sharing of information between government departments and agencies and, where appropriate, with other governments.

### **C. Ferris Blanco, Laura Gray, Robert Suarez and other Members of the Gir Temple**

20. In the course of interrogating prisoners at the Citadel, Belor obtained a statement from Victor Gallagher, a senior member of the Scorpions captured by the Belor armed forces, who claimed that he had met with an individual named Ferris Blanco in Haladonia one-year prior to the embassy bombings to identify possible Beloran targets of violence. According to Mr. Gallagher, Belor's embassy in New Atria was included on the list of possible targets. Mr. Gallagher also indicated that he was never briefed on Mr. Blanco's exact role in the Scorpions, but that he had heard through second-hand sources that Mr. Blanco had planned many of the group's terrorist attacks and was the source of significant financial contributions for the Scorpions.

21. Through the government's records of fingerprints and congregation lists submitted pursuant to the Defense of Freedom Act, Belor's intelligence agency located an individual identified as Ferris Blanco at the Gir Temple, one of the Corpions' main shrines in Haladonia. According to the records, Mr. Blanco was a dual national of Belor and New Atria, a member of the Corpion ethnic and religious group, and the President of the congregation at the Gir Temple.

All 93 of the New Atrian congregation members at the Gir Temple, including Mr. Blanco, had provided the Department of Security and Immigration with the information required under section 13 of the Defense of Freedom Act prior to the September 1, 2001 deadline, and the Temple had provided the information required under section 14 of the Act.

22. On October 14, 2001, on the order of Belor's Minister of National Defense, Boris Thompson, members of Belor's armed forces entered the Gir Temple and apprehended Mr. Blanco. According to congregation members who witnessed the event, the soldiers placed a black bag over Mr. Blanco's head and shackled his hands and feet before removing him from the Temple. Mr. Blanco was then taken to a nearby air base, transported by military plane to New Atria, and detained in the Citadel. In a statement issued shortly after Mr. Blanco's apprehension, Minister Thompson declared that the government had captured one of the master minds behind the New Atria atrocities and that Mr. Blanco, like the other detainees captured during the struggle against the Scorpions, would be brought to justice before the tribunal in New Atria. Minister Thompson also indicated that in the course of apprehending Mr. Blanco at the Gir Temple, the armed forces found detailed blueprints of Belor's Parliament Buildings in the Temple's main administration office.

23. On October 20, 2001, the government of Belor brought a motion before the Belor General Court pursuant to section 32 of the Defense of Freedom Act, requesting an order permitting it to monitor the financial accounts and transactions of all of the congregation members at the Gir Temple for a period of six months, as well as an order freezing the financial assets of the Gir Temple itself, pending an investigation into possible financial ties between the Temple and the Scorpions and other terrorist groups. On October 21, 2001, the General Court granted the orders. Shortly after, administrators at the Gir Temple announced that because of the lack of access to its bank accounts, the Temple would be forced to close. While some congregation members were able to attend another Corpion temple located on the other side of the city, other members were unable to commute because of their age or lack of available transportation and were therefore left without a sacred place to worship.

24. Further, in the course of its investigations into possible connections between the financial activities of the Gir Temple and its members with the Scorpions in New Atria, Belor provided New Atria's intelligence service with the financial data collected pursuant to the General Court's order of October 21, 2001, as well as the records provided by the congregation and its members under sections 13 and 14 of the Defense of Freedom Act. In so doing, Belor invoked the provisions of the International Convention for the Suppression of the Financing of Terrorism, which both states had ratified in 2000 with an explicit understanding that they would respect the treaty's provisions prior to its entry into force. After analyzing the information, New Atria informed Belor by way of a diplomatic note dated November 2, 2001 that two New Atrian members of the Gir congregation, Laura Gray and Robert Suarez, were suspected of being members of the Scorpions and had been indicted by the New Atrian courts for the crime of hostage-taking in connection with the abduction of a business leader in New Atria in 1997.

25. Following the receipt of New Atria's diplomatic note, Beloran authorities discovered that both Ms. Gray and Mr. Suarez had overstayed 6-month visitors' visas that had been issued to them in October of the previous year. On November 15, 2001, officials with the Department of



Security and Immigration obtained arrest and deportation orders against Ms. Gray and Mr. Suarez from the General Court pursuant to section 17 of the Defense of Freedom Act. The judge who issued the orders did not require Ms. Gray and Mr. Suarez to be brought before the Court prior to their deportation, explaining in his reasons that both individuals had been in the country for over one year, had voluntarily overstayed their visas, and were therefore clearly ineligible to remain in the country. On November 16, 2001, immigration officers arrested Ms. Gray and Mr. Suarez who, upon learning of their pending deportations, claimed that the criminal proceedings against them in New Atria were politically motivated. Ms. Gray and Mr. Suarez were then escorted to the national airport and placed on a flight to New Atria. Both individuals were arrested upon their arrival at the national airport in Kawori and transferred to the Citadel to await their trials.

26. On December 1, 2001, Belor, in response to inquiries by the ICRC and several non-governmental organizations, announced that it considered Mr. Blanco, like the other detainees, to be an unprivileged combatant captured and detained in connection with an ongoing armed conflict with the Scorpions and therefore that his apprehension and detention were authorized under applicable international humanitarian law. Belor also announced that the special tribunal in New Atria had commenced an investigation into Mr. Blanco's role in the embassy bombings, with a view to determining whether he should be charged with war crimes, crimes against humanity or terrorism in connection with the attacks.

### III. Proceedings before the Domestic Courts

27. "Rights International", a leading human rights group in Belor, filed a habeas corpus petition with the courts in Belor on December 2, 2001 on behalf of Mr. Blanco as well as other unnamed Citadel detainees pursuant to the human rights provisions of Belor's Constitution,<sup>1</sup> requesting that the detainees be brought before Belor's domestic courts to determine the legality of their apprehensions and detentions or be released. The petition also challenged the treatment received by Mr. Blanco and the other Citadel detainees. Further, the petition alleged that the special tribunal's criminal investigation against Mr. Blanco violated his right to due process and his right to freedom from *ex post facto* laws.

28. In a decision issued on January 21, 2002, the General Court dismissed the habeas corpus petition for lack of jurisdiction on the basis that the detainees were not located within Belor's territory. With respect to Mr. Blanco, the General Court found that it had jurisdiction to entertain

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<sup>1</sup> The pertinent provisions of the Constitution of Belor provide as follows:

3. It is hereby recognized and declared that in the Republic of Belor there have existed and shall continue to exist without discrimination by reason of race, origin, color, religion or sex, the following fundamental human rights and freedoms, namely:-

- a. the right of the individual to life, liberty, security of the person and the right not to be deprived thereof except by due process of law;
- b. the right of the individual to equality before the law and the protection of the law;
- c. the right of the individual to respect for his private and family life;
- d. the right to political participation;
- e. the right to the use and enjoyment of property;
- f. freedom of movement;
- g. freedom of conscience and religious belief and observance;
- h. freedom of thought and expression;
- i. freedom of association and assembly; and
- j. freedom of the press.

his petition based upon the fact that Mr. Blanco was a dual national of Belor and New Atria and had initially been apprehended in Belor, but deferred to the military's determination that Mr. Blanco was an unprivileged combatant captured in the course of an armed conflict and therefore that his detention was authorized under the laws of war. The General Court also declined to address the treatment of Mr. Blanco and the other detainees, on the ground that these issues were more appropriately dealt with by applicable mechanisms under international humanitarian law, including supervision by the ICRC, rather than the domestic courts of Belor. Finally, the General Court declined to address the question of the fairness of Mr. Blanco's legal proceedings, on the ground that the claim was premature and that, if convicted, he would have the right to appeal his conviction and sentence to the High Court of Belor. The High Court of Belor dismissed the final appeal from the habeas corpus petition on September 20, 2002.

29. On December 10, 2001, Rights International also filed two constitutional actions with the General Court of Belor. One action was lodged on behalf of all New Atrian members of the Gir Temple of New Atrian nationality, challenging the application of sections 13 and 14 of the Defense of Freedom Act to their circumstances under the provisions of Belor's Constitution governing the right to privacy, the right to religious belief and observance, and the right to equality before the law. The first action also challenged the application of section 32 of the Defense of Freedom Act to the congregation members and the closure of the Temple under the provisions of Belor's Constitution governing the right to privacy, the right to property, the right to religious belief and observance, and the rights to freedom of assembly and association. The second action challenged the arrest and deportation of Laura Gray and Robert Suarez pursuant to their constitutional rights to liberty and security of the person and the right to due process of law, as well as their right to seek and receive asylum under the U.N. Convention relating to the Status of Refugees.

30. In judgments issued on March 13, 2002, the General Court dismissed both actions. Concerning the first proceeding, the Court concluded that the plaintiffs' rights to freedom of assembly and association were not violated because it was open to them to find alternative locations in which to meet and worship. The Court also rejected the claims relating to the right to property, the right to privacy, and the right to religious belief and observance because the restrictions imposed by the State constituted justifiable limitations under the Constitution of Belor on grounds of national security and public order. In dismissing the second action, the General Court concluded that the arrest and deportation of Laura Gray and Robert Suarez were authorized by law and executed pursuant to an order of the General Court. The Court also found that there were reasonable grounds to believe that Ms. Gray and Mr. Suarez were associated with a terrorist organization and had committed terrorist crimes and therefore would not be entitled to receive asylum under the international agreements to which Belor was a party. The final appeals from the judgments of the General Court were dismissed by the High Court on November 14, 2002.

#### **IV. Proceedings before the Inter-American Human Rights System**

31. On January 5, 2003, Rights International filed a petition with the Inter-American Commission on Human Rights on behalf of Mr. Blanco, unnamed Citadel detainees, and named members of the congregation of the Gir Temple, including Laura Gray and Robert Suarez. The

petition alleged Belor's international responsibility for violations of the following treaty provisions:

1. with respect to the apprehension, detention, treatment, and criminal investigation of Mr. Blanco, violations of Articles 1(1), 5, 7, 8, 9 and 25 of the American Convention on Human Rights and the State's obligations under Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture;
  2. with respect to the detention and treatment of unnamed Citadel detainees, violations of Articles 1(1), 5, 7, 8 and 25 of the American Convention on Human Rights and the State's obligations under Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture;
  3. with respect to the application of sections 13, 14 and 32 of the Defense of Freedom Act to the named members of the congregation of the Gir Temple and the closure of the Temple, violations of Articles 1(1), 11, 12, 15, 16, 21, and 24 of the American Convention on Human Rights;
  4. with respect to the application of section 17 of the Defense of Freedom Act to Laura Gray and Robert Suarez and their subsequent arrest and deportation, violations of Articles 1(1), 7, 8, 22 and 25 of the American Convention on Human Rights.
32. In a report dated October 5, 2003, the Commission found all the claims to be admissible and, in its preliminary merits report dated March 13, 2004 and adopted pursuant to Article 50 of the Convention and Article 43(2) of the Commission's Rules of Procedure, found violations of all of the above provisions of the Convention.
33. On May 6, 2004, Belor informed the Commission that it did not intend to implement the recommendations contained in the Commission's preliminary merits report. The government also informed the Commission that the special tribunal in New Atria had charged Mr. Blanco with war crimes, crimes against humanity and terrorism in connection with his alleged role in the embassy bombings. According to Belor, the prosecution would be seeking the death penalty, Mr. Blanco had been provided with access to a military defense attorney in accordance with the tribunal's regulations, and his trial would commence in July 2004.
34. In light of the State's response, the Commission, in consultation with Rights International, decided to refer the matter to the Inter-American Court of Human Rights. In its application to the Court, which was filed on May 29, 2004 and notified to the State on June 1, 2004, the Commission:
1. Requested the Court to adopt provisional measures pursuant to Article 63(2) of the American Convention and Article 25 of the Court's Rules of Procedure in favor of Mr. Blanco requiring Belor to suspend the criminal proceedings against him pending the determination of his complaint before the Inter-American system;

2. Alleged the international responsibility of Belor for the violations determined by the Commission in its preliminary merits report.

35. In response to the Commission's application, Belor raised a preliminary objection to the Court's jurisdiction *ratione loci*, in respect of both the request for provisional measures and the claims relating to Mr. Blanco and the other detainees at the Citadel, on the ground that the alleged victims were located outside of Belor's territory and beyond the geographic region encompassed by the Organization of American States. The State also made submissions on the merits of the matters raised before the Court.

36. The Court has convened a hearing on the provisional measures, preliminary objections, and merits and eventual reparations in May 2005 in Washington, D.C.

## V. Relevant Instruments

37. The Republic of Belor is a party to the following treaties, without pertinent reservations:

- Charter of the Organization of American States, ratified in 1948.
- American Convention on Human Rights, including the contentious jurisdiction of the Inter-American Court of Human Rights, ratified and accepted in 1984.
- Inter-American Convention to Prevent and Punish Torture, ratified in 1986.
- Inter-American Convention Against Terrorism, ratified on June 15, 2002.
- International Covenant on Civil and Political Rights and its first Optional Protocol, ratified in 1979.
- Rome Statute of the International Criminal Court, ratified in 2000.
- U.N. Convention relating to the Status of Refugees, ratified in 1957, and its 1967 Additional Protocol, ratified 1974.
- The four Geneva Conventions of 1949, ratified in 1951, and their two additional Protocols of 1977, ratified in 1978.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, ratified in 1973
- International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on December 14, 1973, ratified in 1974.
- Convention on the Prosecution and Punishment of Crimes against Internationally-Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973, ratified in 1974.

- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997, ratified in 1998.
- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999, ratified in 2000.

38. New Atria is a party to the following treaties, without pertinent reservations:

- International Covenant on Civil and Political Rights and its first Optional Protocol, ratified in 1981.
- Rome Statute of the International Criminal Court, ratified in 2001.
- The four Geneva Conventions of 1949 and their two additional Protocols of 1977, ratified in 1981.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, ratified in 1982
- International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on December 14, 1973, ratified in 1982.
- Convention on the Prosecution and Punishment of Crimes against Internationally-Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973, ratified in 1974.
- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997, ratified in 1998.
- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999, ratified in 2000.

39. The Rules of Procedure of the Inter-American Commission of Human Rights that entered into force on May 1, 2001 with amendments made thereto during the Commission's 116<sup>th</sup> and 118<sup>th</sup> regular periods of sessions, and the Rules of Procedure of the Inter-American Court of Human Rights that entered into force on June 1, 2001 with the amendments made thereto during the Court's LXI ordinary period of sessions and that entered into force on January 1, 2004, apply in this case.