

IN THE
INTERNATIONAL COURT OF JUSTICE

March, 1971

CASE NO. 1

AEGEA and
BARCELONA

Applicants

v.

FRANCONIA

Respondent

MEMORIAL FOR RESPONDENT

Timothy F. Prugh
Richard A. Sinkfield
Agents for
Franconia

Charles G. Burr III
Barton T. Jones
Charles J. Todd
On the Memorial

IN THE
INTERNATIONAL COURT OF JUSTICE

March, 1971

CASE NO. 1

AEGEA
AND
BARCELONA
v.
FRANCONIA

Applicants

Respondent

MEMORIAL FOR RESPONDENT

INDEX

	Page
Jurisdiction.....	1
Statement of Facts.....	2
Graphic Illustration.....	4
Questions Presented.....	5
Summary of Argument.....	6
Argument:	
I. FRANCONIA IS ENTITLED TO REPARATIONS FROM AEGEA AND BARCELONA FOR THE DESTRUCTION OF ITS SULPHUR MINE AND DEATH OF ITS NATIONALS.....	8
A. <u>Aegea and Barcelona are liable for the damage they caused to Franconia while committing an international trespass.....</u>	8
1. Aegea's and Barcelona's wilful entry into Franconia's airspace without its consent was an international trespass.....	8
2. The Applicants' entry into Franconia's airspace without consent was not excused by conventional law.....	9
3. The Applicants' entry into Franconia's airspace without consent was not excused by customary international law.....	11
B. <u>Aegea and Barcelona are liable for their negligent destruction of Franconia's sulphur mine, even if their entry into Franconia's airspace was justified.....</u>	13
C. <u>Aegea and Barcelona are liable for the injuries caused by their military without regard to actual fault.....</u>	14
II. FRANCONIA IS ENTITLED TO REPARATIONS FROM AEGEA FOR THE TRADE DECREASE CAUSED BY THE ILLEGAL BOYCOTT OF AIRSERVICE TO FRANCONIA.....	15
A. <u>Aegea is liable for its failure to use due diligence to prevent and remedy the injuries caused Franconia by the AAPA boycott.....</u>	15

B.	<u>In the alternative Aegea is liable for the damages caused to Franconia for its complicity with the AAPA in the illegal boycott.....</u>	15
1.	Aegea was in complicity with the AAPA in perpetrating the boycott of Franconia's aerservice...	15
2.	The AAPA boycott was an illegal use of economic coercion against Franconia.....	16
C.	<u>Aegea is liable for damages resulting from its failure to perform its obligations under the Universal Postal Convention and the 1966 Bilateral Air Agreement.....</u>	16
III.	AEGEA AND BARCELONA ARE NOT ENTITLED TO REPARATIONS FROM FRANCONIA FOR THE HIJACKING AND THE DESTRUCTION OF THE AIRCRAFT.....	18
A.	<u>Franconia is not responsible for the hijacking of the aircraft.....</u>	18
1.	Aegea and Barcelona cannot benefit from their negligent failure to prevent the hijacking.....	18
2.	Franconia had no opportunity to prevent the hijacking.....	18
B.	<u>Franconia is not liable for the destruction of the aircraft by the hijackers.....</u>	19
1.	Franconia had no opportunity to prevent the destruction of the aircraft.....	19
2.	The Court should not adjudicate this issue without the presence of Eden.....	20
C.	<u>Franconia has no obligation to extradite the hijackers.....</u>	21
D.	<u>Franconia has no obligation to prosecute the hijackers...</u>	22
IV.	AEGEA AND BARCELONA ARE NOT ENTITLED TO REPARATIONS FOR THE DETENTION OF THEIR NATIONALS BY FRANCONIA.....	24
V.	THE APPLICANTS ARE AT LEAST IN PARI DELICTO AND NOT ENTITLED TO REPARATIONS.....	26
	Conclusion.....	27
	Index of Authorities.....	28,29,30,31,32
	Certificate.....	33

JURISDICTION

Jurisdiction of the International Court of Justice "comprises all cases which the parties refer to it." I.C.J. STAT. art. 36, para. 1. Aegea, Barcelona, and Franconia have accepted jurisdiction of the Court and have waived preliminary objections. Compromis at 5.

STATEMENT OF FACTS

On January 20, 1970, the electronic surveillance system at an Aegean airport failed, and other security measures were disregarded. Two Barcelona nationals, carrying a handgrenade and rifle, boarded an aircraft scheduled to fly to Damascus. The aircraft was owned by a private company incorporated in Aegea with the majority of stock owned by Eden nationals, but leased to a government-owned company of Barcelona. The two Barcelona nationals hijacked the aircraft while in Eden's airspace and forced it to fly to Franconia. While in Eden's airspace, two security guards attacked the hijackers, but were killed by them. After entering Franconia's airspace, fighter planes from Aegea and Barcelona intercepted the aircraft and fired rockets across its bow. These rockets struck Franconia's sole industrial plant, a sulphur mine, causing major damage and killing three Franconian nationals. The production of the mine decreased by 45% and will require nine to eighteen months to reach its previous production, at a cost to Franconia of \$40 million.

After the hijacked aircraft landed in Franconia, the hijackers disembarked the passengers, destroyed the aircraft, and surrendered to Franconia's police. The hijackers were members of the Barcelona Liberation Front (BLF), a group seeking the separation of the Bemen Province from Barcelona. Franconia granted the hijackers political asylum on January 21, 1970. The next day, the Aegean Airline Pilots Association (AAPA) instituted a boycott of all in-coming and out-going flights from Franconia. The International Federation of Airline Pilots Association (IFAPA) joined in the boycott. Franconia depended on Aegea's pilots to transport 90% of its

import-export trade, and as a result of the boycott, suffered an 85% decrease in its trade level. All medical supplies and mail into Franconia were halted, although Aegea is a member of the Universal Postal Convention.

Franconia refused to extradite the hijackers under the 1933 Barcelona-Franconia Extradition Treaty, which excepted political offenses from extradition. Franconia has not prosecuted the hijackers under its Public Law 1234, which proscribes "air piracy" and has detained the passengers and crew members who are Aegea's and Barcelona's nationals, including a United Nations employee and a Barcelonan ambassador. One year prior to the hijacking, Franconia and Barcelona had severed diplomatic relations. In 1966, Aegea and Franconia had entered into a Bilateral Air Agreement which would have incorporated the 1963 Tokyo Convention. At the signing of the Agreement, Franconia delivered to Aegea an express reservation to be bound only by Article 24 of the Tokyo Convention. Franconia has not ratified the Convention, while Aegea and Barcelona have. Aegea, Barcelona, and Franconia are members of the United Nations.

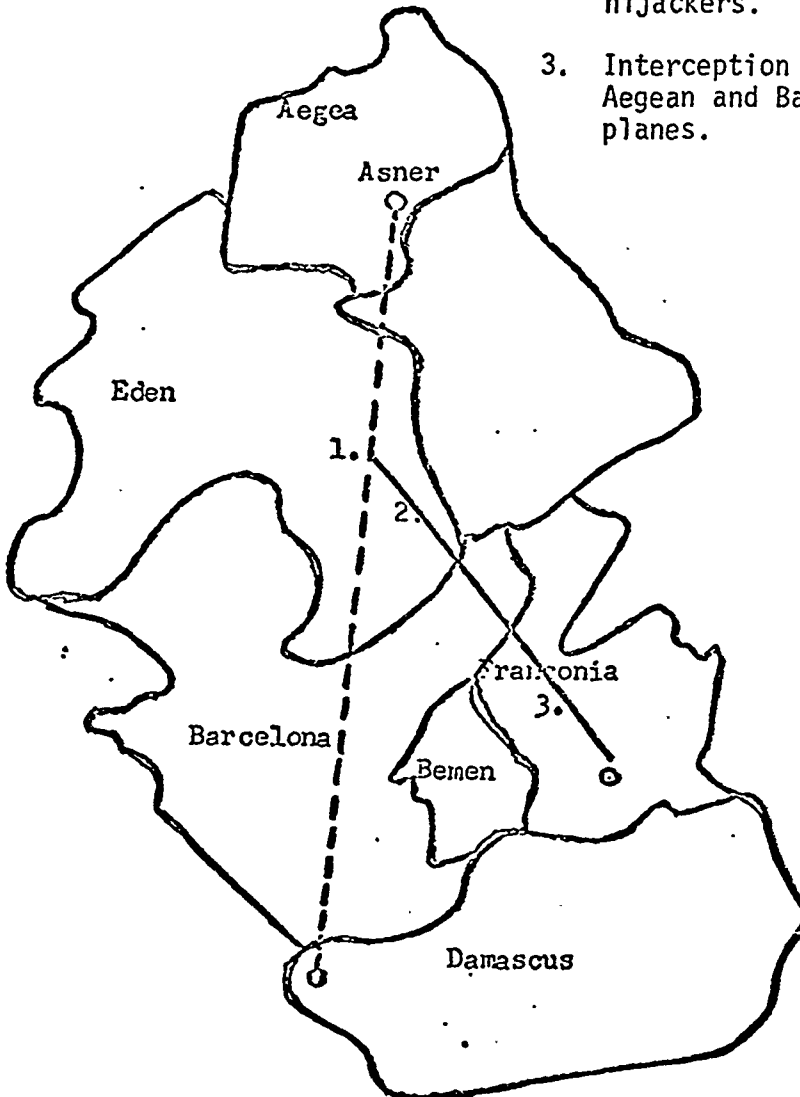
Attempts to settle the matter through negotiation have failed, and all parties have agreed to submit the dispute to this Court, before which Franconia appears as respondent. The parties have stipulated the foregoing facts and have waived all preliminary objections.

GRAPHIC ILLUSTRATION

----- scheduled flight of aircraft

_____ route of aircraft after hijacking

1. Aircraft hijacked.
2. Attempt by security guards to stop hijackers and subsequent murder of the guards by the hijackers.
3. Interception of the aircraft by Aegean and Barcelonan fighter planes.



QUESTIONS PRESENTED

1. Whether Franconia is entitled to reparations for its injuries caused during the unauthorized invasion by the Applicants' aircrafts and the isolation caused by the illegal boycott of the Applicants' nationals.
2. Whether Franconia is liable for the hijacking and destruction of the aircraft by Barcelona's nationals.
3. Whether Franconia was justified in detaining the Applicants' nationals to prevent its further injury and to secure its right to a legal determination of an international dispute.

SUMMARY OF ARGUMENT

Franconia is entitled to reparations from the Applicants for the destruction of its mine and the homicide of its nationals. The Applicants are liable for the injuries caused during the unconsented entry of their military aircrafts into Franconia's territory. International law imposes strict liability upon trespassers for the injuries they cause. Even if the invasion of Franconia's airspace was not a trespass, the firing of the rockets by the Applicants' military aircraft were acts of negligence. States must make reparations for injuries caused by their negligent acts. International law also imposes strict liability upon a state for the injuries caused by its military.

Franconia is entitled to reparations from Aegea for the trade decrease caused by the AAPA boycott. International law prohibits a state from using economic coercion to settle disputes. Aegea used the AAPA boycott to deny Franconia an opportunity to negotiate or adjudicate its rights. A state is obligated to exercise due diligence to prevent and remedy injury by its nationals to aliens. Aegea's failure to attempt to prevent the boycott breached this obligation. Aegea's failure to insure the delivery of mail into Franconia violated the Universal Postal Convention. The breach of any international obligation creates a duty to pay reparations for that breach.

Franconia is not liable for the hijacking or the destruction of the aircraft by the hijackers. International law does not grant reparations to states who contribute to their own injury. The Applicants' contributed to their own injury by negligently permitting the hijackers to board that aircraft with weapons.

The compromis does not show that Franconia had an opportunity to prevent either the hijacking or destruction of the aircraft. Franconia may be subject to double liability if the issue of her liability is decided without the presence of Eden. This Court should refuse to adjudicate this issue.

An obligation to extradite criminals must arise from a treaty. Franconia's determination that the hijackers committed political crimes excused her from extraditing or prosecuting the hijackers. International law does not require the punishment or extradition of political criminals.

Franconia is not liable for the detention of the Applicants' nationals. Customary international law permits a state to detain the passengers of a hijacked aircraft when coercion or reprisals have been exercised against it. The Applicants are not entitled to reparations even if the detention of their nationals was not justified. International law does not grant reparations to parties in *pari delicto*, unless their injuries are disproportionate. The Applicants' negligence and delicts make them at least in *pari delicto* with Franconia. Franconia is entitled, however, to reparations for the disproportionate part of its injury, even if it is in *pari delicto* with the Applicants.

ARGUMENT

I. FRANCONIA IS ENTITLED TO REPARATIONS FROM AEGEA AND BARCELONA FOR THE DESTRUCTION OF ITS SULPHUR MINE AND DEATH OF ITS NATIONALS.

A. Aegea and Barcelona are liable for the damage they caused to Franconia while committing an international trespass.

1. Aegea's and Barcelona's wilful entry into Franconia's airspace without its consent was an international trespass.

Aegea's and Barcelona's entry into Franconia's airspace without its consent was prohibited under international law. Customary international law requires the prior consent of a foreign state before entering that state. S. S. Lotus, P.C.I.J. Ser. A, No. 10 (1927), 2 HUDSON, WORLD CT. REP. 20 (1935); W. BISHOP, INTERNATIONAL LAW 435 (3d ed. 1962); 1 L. OPPENHEIM, INTERNATIONAL LAW § 125 (8th ed. H. Lauterbach ed. 1963). The fundamental premise of international law is that every state has a sovereign right of territorial inviolability. Corfu Channel (Merits) Case [1949] I.C.J. REP. 18; The I'm Alone (Canada v. United States), Dep't State Arb. Ser. No. 2, 2 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 703 (1941); 2 L. OPPENHEIM, supra at 154; J. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 155 (6th ed. 1967); 3 E. VATTEL, LAW OF NATIONS § 204, at 8 (1758 ed. C Fenwick transl. 1916). This right of inviolability includes the airspace of a state. CHICAGO CONVENTION ON INTERNATIONAL CIVIL AVIATION art. I, II, Dec. 7, 1944, T.I.A.S. No. 1591; N. POULANTZAS, THE RIGHT OF HOT PURSUIT IN INTERNATIONAL LAW 339 n.1 (1969); J. STARKE, supra at 168. The inviolability of airspace is important in an age where aircraft carry weapons capable of extensive destruction. N. POULANTZAS, supra at 339. The

Applicants' invasion of Franconia's airspace is also prohibited by the United Nations Charter. Article II, paragraph 4 of the Charter strictly forbids the unilateral use of force "against the territorial integrity of any state." U.N. CHARTER art. 2, para. 4; S.C. Res. of March 29, 1955 (U.N. News Release No. 16/55); D. BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 13 (1958); I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 298, 301 (1963). The unauthorized entry of the Applicants' fighter planes breached this prohibition.

Franconia is entitled to reparations for the injuries caused by Aegea and Barcelona while trespassing within Franconia. A general principle of law recognized by civilized nations is that a trespasser is liable for all direct injuries which he causes, even if the injuries were not intended. Pickering v. Rudd, 4 Camp. 219, 1 Stark. 56 (1815); 2 DIGEST OF ENGLISH CIVIL LAW § 798 (4th ed. 1947); H. WHEATON, ELEMENTS OF INTERNATIONAL LAW § 429 at 521-24 (8th ed. 1866). Liability is imposed to avoid immediate retaliation by the injured party. W. PROSSER, ON TORTS 26 (3d ed. 1964); Plucknett, Case and the Statute of Westminster II, 31 COLUM. L. REV. 778 (1931). Aegea's and Barcelona's fighter planes fired the rockets which destroyed Franconia's sulphur mine. This destruction was a direct injury caused by the trespassers. The breach of an international obligation creates an obligation to make reparations for the breach. Case Concerning the Factory at Chorzow, P.C.I.J. Ser. A, No. 17 (1928); I.C.J. STAT. art. 36(2)(d), 39 AM. J. INT'L L. Supp. 223 (1945); G. SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 173 (5th ed. 1967).

2. The Applicants' entry into Franconia's airspace without consent was not excused by conventional law.

The interception of the aircraft within Franconia's airspace was not a proper exercise of self-defense under the United Nations Charter. The United Nations Charter prohibits the use of force against another state, except to repel the threat of "armed attack" against its own territory. U.N. CHARTER art. 51. A use of force is permissible only to defend the continued existence of a state and its jurisdiction over its territory. The Caroline Case (1837) 2 J. MOORE, INTERNATIONAL LAW DIGEST 409 (1906); D. BOWETT, supra at 30-31; H. KELSEN, THE LAW OF THE UNITED NATIONS 269 (1964). The hijacking of the aircraft did not pose a threat of armed aggression against the territory of either Aegea or Barcelona.

Neither Aegea's nor Barcelona's invasion of Franconia's airspace was authorized by the 1966 Bilateral Air Agreement. Barcelona cannot claim rights under the Agreement, because it was not a party to the Agreement. Under international law a state, not a party to the treaty, cannot enforce the obligations of the treaty, unless the treaty expressly makes the state a third party beneficiary. THE VIENNA CONVENTION ON THE LAW OF TREATIES art. 34, open for signature May 29, 1969, 63 AM. J. INT'L L. 881 (1969) (hereinafter cited as VIENNA CONVENTION): G. VON GLAHN, LAW AMONG NATIONS 438 (1970). Barcelona was not made a third party beneficiary to the 1966 Agreement. Nor was Aegea's invasion of Franconia authorized by the 1966 Agreement. The 1966 treaty conferred only reciprocal landing rights upon Aegea and Franconia. Compromis at 2-3. The treaty was for commercial purposes and did not authorize the entry of military aircraft in Franconia's airspace.

The 1963 Tokyo Convention did not confer upon either Aegea or Barcelona the right to invade Franconia's airspace. By its terms the Convention only

applies to those states which ratify it. See CONVENTION OF OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT art. 17(4)(c), 20, Sept. 14, ICAO Doc. 8364 (1963) (hereinafter cited as TOKYO CONVENTION). Barcelona cannot claim rights under the Convention, because Franconia has not ratified it and is not bound by it. Aegea's invasion of Franconia was not authorized by the Convention, even though the 1966 Bilateral Air Agreement purported to incorporate the terms of the Tokyo Convention. At the signing of the Agreement, Franconia delivered to Aegea an explicit reservation which stated in part: "The condition of adherence to and performance of the obligations imposed by the 1963 Tokyo Convention will not become operative until both of the signatories to this agreement have ratified it." Compromis at 2-3. Franconia accepted only Article 24 of the Convention. Under international law a reservation to a treaty is binding unless express objection is made to it. VIENNA CONVENTION art. 20; 1 D. O'CONNELL, INTERNATIONAL LAW 250 (1965). Aegea made no objection to the reservation. Until this incident arose, Aegea performed its obligations under the Air Agreement. A treaty is analogous to a contract, and international law enforces treaties according to the actions of the parties. International Status of South-West Africa, (1950) I.C.J. REP. 135; Chamizal Arbitration, HUDSON, CASES ON INTERNATIONAL LAW 457, 460 (2d ed. 1936); L. McNAIR, THE LAW OF TREATIES 426 (1961).

3. The Applicants' entry into Franconia's airspace without consent was not excused by customary international law.

The Applicants' interception of the hijacked aircraft in Franconia's airspace was not justified as an exercise of "hot pursuit". Hot pursuit is permitted as an extension of a state's jurisdiction. N. POULANTZAS, supra at 339; AIR LAWS AND TREATIES OF THE WORLD, U.S. SEN. COMM. ON COMMERCE,

Vol. I-II at 261, 420. Washington, 1965. A state has jurisdiction over its own territory, and in certain instances, upon international waters. 1 L. OPPENHEIM, supra at § 260. See GENEVA CONVENTION ON THE HIGH SEAS art. 15, done at Geneva, April 29, 1958, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82 (hereinafter cited as 1958 GENEVA CONVENTION); J. STARKE, supra at 29. The Applicants did not have the right to hot pursuit because the crime was not committed within the jurisdiction of Aegea or Barcelona. The hijacking occurred within Eden's airspace and only Eden could have a right to pursue the hijackers. A proper exercise of the right of hot pursuit also requires that the pursuit be immediate and continuous. D. BOWETT, supra at 85-86; W. COPLIN, THE FUNCTIONS OF INTERNATIONAL LAW 35 (1966); N. POULANTZAS, supra at 1-2. The right of hot pursuit is a special privilege which is lost by undue delay or negligent pursuit. The Applicants have the burden of proving that an immediate and continuous pursuit of the hijacked aircraft occurred. The compromis states that, "[a]fter entering Franconia's airspace the hijacked airliner was intercepted by Aegean and Barcelonan fighter planes" (Emphasis supplied). This statement implies that no pursuit occurred.

The Applicants' invasion of Franconia's airspace was not justified as a means of suppressing piracy. Piracy is the perpetration of acts for private ends outside the jurisdiction of any state. 1958 GENEVA CONVENTION art. 15; J. BRIERLY, THE LAW OF NATIONS 313 (6th ed. 1963); Panhuys, Aircraft Hijacking and International Law, 9 COLUM. J. TRANSNAT'L L. 1 (1970). The hijacking occurred within the jurisdiction of Eden and was not done for private gain. The hijackers did nothing which would yield them personal remuneration. Thus, the elements necessary to establish piracy are absent.

The Applicants could exercise no jurisdiction over the hijackers within the territory of Franconia, even if the hijackers were pirates. The principle of customary international law which confers upon all states universal jurisdiction over pirates does not apply. This principle refers to the right of any state to capture and punish pirates upon the high seas or within its own jurisdiction. J. BRIERLY, supra at 311; H. JACOBINI, INTERNATIONAL LAW 137 (rev. ed. 1968); 1 L. OPPENHEIM, supra at 616. The universality of the jurisdiction does not extend into the territory of foreign states. 1 L. OPPENHEIM, supra at 616; N. POULANTZAS, supra at 277.

B. Aegea and Barcelona are liable for their negligent destruction of Franconia's sulphur mine, even if their entry into Franconia's airspace was justified.

International law imposes liability upon a state for its negligent injury to other states. E. BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD 217 (1928); J. BRIERLY, supra at 152. The Applicants could reasonably foresee some injury to Franconia when they fired the rockets, knowing they would strike Franconia's soil. A general principle of law recognized by civilized nations imposes liability upon a state for the unforeseen consequences of its negligence. Smith v. London & Southwestern Ry. Co., L.R. 6 C.P. 14 (1870); W. PROSSER, supra at 299-300. A state must take existing circumstances as it finds them. The Applicants are liable for their negligent injury to Franconia, even though the extent of the injury was not necessarily foreseen at the time the negligence was committed.

The firing of the rockets by the fighter planes cannot be justified as the firing of warning shots. Such warning shots must explode in the air. C. SHAWCROSS & K. BEAUMONT, ON AIR LAW Appendix C at 639 (3d ed. 1969). The rockets fired by the fighter planes did not explode in the air.

C. Aegea and Barcelona are liable for the injuries caused by their military without regard to actual fault.

International law imposes strict liability upon a state for unexcused injuries caused by its military, whether the conduct was authorized or unauthorized. Thomas Y. Youmans Case, [1925-26] ANN. DIG. 3 (No. 162); 6 J. MOORE, DIGEST OF INTERNATIONAL LAW 762 (1906). Each state has exclusive control over the command and discipline of its military. The fact that military personnel caused the injuries is prima facie evidence that the state is responsible for those injuries. Bellon Case, [1929-30] ANN., DIG. No. 104; 1 L. OPPENHEIM, supra at 362. The Applicants' military planes caused the destruction of Franconia's sulphur mine and the death of its nationals, and they are therefore strictly liable for those injuries.

II. FRANCONIA IS ENTITLED TO REPARATIONS FROM AEGEA FOR THE TRADE DECREASE CAUSED BY THE ILLEGAL BOYCOTT OF AIRSERVICE TO FRANCONIA.

A. Aegea is liable for its failure to use due diligence to prevent and remedy the injuries caused Franconia by the AAPA boycott.

International law imposes an obligation on every state to use due diligence to prevent, protect, and redress injury caused to aliens by its private citizens. Lynching of Italians in New Orleans, 6 J. MOORE, *supra* at 837; Harvard Research in International Law, Responsibility of States, 23 AM. J. INT'L L. Spec. Supp. 190-91 (1929); 1 L. OPPENHEIM, *supra* at 365; W. BISHOP, *supra* at 780; Sohn & Baxter, Responsibility of States for Injuries to the Economic Interests of Aliens, 55 AM. J. INT'L L. 546 (1961). The AAPA boycott caused an 85% decrease in trade and halted all mail and medical supplies into Franconia. Compromis at 4. Aegea's failure to even request the AAPA to cease their boycott constituted a breach of its obligations under international law and makes her liable for the damages caused.

B. In the alternative Aegea is liable for the damages caused to Franconia for its complicity with the AAPA in the illegal boycott.

1. Aegea was in complicity with the AAPA in perpetrating the boycott of Franconia's airtservice.

Aegea was in complicity with AAPA in attempting to coerce Franconia to accede to its demands. The AAPA was a state-funded and chartered association of Aegea which carried 90% of the import-export trade of Franconia. Compromis at 4. Aegea knew that its bargaining position would be enhanced by isolating Franconia. The demands of the AAPA were identical to those of Aegea. These circumstances taken together present a prima facie case that Aegea was in complicity with the AAPA. International law prohibits the use of private citizens or associations by a state to injure aliens. Report of League of

Nations Committee of Enquiry (Lytton Comm.), League of Nations Doc. No. 1932. VII. 12, at 119-20. See Zafiro Case, (1925) Nielsen Rep. 578, 583-85; Sanopoulos v. Bulgarian State, 7 Rec des décis. des trib. arb. mixtes 47 (1906); W. BISHOP, supra at 763, 780, 906. A state cannot insulate itself from liability by actions through private citizens.

2. The AAPA boycott was an illegal use of economic coercion against Franconia.

International law prohibits the use of economic coercion to deny a state the legal determination of its rights. OAS CHARTER art. 16 (1948); U.N. Res. 2131, Dec. 21, 1965; W. BISHOP, supra at 906. As members of the United Nations the Applicants are obligated to substitute peaceful proceedings for the use of force in determining rights. U.N. CHARTER art. 2, para.

3. At the time of the boycott, Franconia and Aegea had not reached a legal determination of their respective rights and obligations. The AAPA boycott of Franconia was an illegal use of economic coercion to force Franconia to accede to the demands of Aegea. The AAPA boycott attempted to deny Franconia the opportunity to determine its obligation through normal negotiation or adjudication. Neither Aegea nor the AAPA requested the assistance or consent of the United Nations Security Council or attempted any other non-coercive means prior to the boycott as required by international law. U.N. CHARTER art. 41; OAS CHARTER art. 16 (1948).

- C. Aegea is liable for damages resulting from its failure to perform its obligations under the Universal Postal Convention and the 1966 Bilateral Air Agreement.

International law requires a state to use due diligence to perform its treaty obligations. International Peace Treaties (Second Phase) Case, [1950] I.C.J. REP. 228. See Case Concerning the Factory at Chorzow [1921] P.C.I.J. Ser. A, No. 8. As a member of the Universal Postal Convention, Aegea is

obligated to guarantee the free passage of mail through its territory. UNIVERSAL POSTAL CONVENTION CONST. art. I, § 1. Aegea made no effort, such as using government-owned aircraft, to guarantee the delivery of the mail, although the AAPA boycott halted the passage of mail to Franconia. Franconia is a third party beneficiary of the Universal Postal Convention, since the Convention seeks to benefit all nations. Franconia is entitled to reparations from Aegea for its failure to use due diligence to perform its Convention obligations. The Manouba (France v. Italy), P. Ct. Arb., SCOTT, THE HAGUE COURT REPORTS 342 (1916); John D. Metzger & Co. (United States v. Haiti) 1901 For. Rel. 262; Charles Adrian Van Bokkelen (United States v. Haiti), 1884 For. Rel. 306; 1 M. WHITEMAN, DAMAGES IN INTERNATIONAL LAW 7 (1937); 3 M. WHITEMAN, supra at 1668.

Aegea's failure to act also violated the 1966 Bilateral Air Agreement between Aegea and Franconia. Aegea failed to use either government-owned aircraft or its pecuniary influence over the AAPA to carry out its obligation to transport Franconia's trade. The breach of any legal obligation creates an obligation to make reparations for that breach. Case Concerning the Factory at Chorzow, [1921] P.C.I.J. Ser. A, No. 8; I.C.J. STAT. art. 36, para. 2(d).

III. AEGEA AND BARCELONA ARE NOT ENTITLED TO REPARATIONS FROM FRANCONIA FOR THE HIJACKING AND THE DESTRUCTION OF THE AIRCRAFT.

A. Franconia is not responsible for the hijacking of the aircraft.

1. Aegea and Barcelona cannot benefit from their negligent failure to prevent the hijacking.

Aegea's and Barcelona's failure to exercise due diligence to prevent the hijacking denies them a right to reparations. A general principle of international law recognized by civilized nations is that a party is not entitled to reparations if its failure to exercise due diligence contributed as a legal cause to the harm which it suffered. Heirs of Hart Mix, MS DEP'T STATE, file No. 424.11, M 69; Joseph Wisnowski, MS DEP'T STATE, file No. 411.60cW 76; Mrs. Arthur Jones, MS DEP'T STATE, file No. 439.11; 3 M. WHITEMAN, supra at 144, 218, 658. A state must be primarily responsible for its own protection. W. COPLIN, supra at 20. Aegea failed to use electronic surveillance or manual inspection of the passengers at the airport. Compromis at 1. This negligence enabled the hijackers to board the aircraft with weapons necessary to effectuate the hijacking. The Applicants' contributory negligence bars their recovery, even if this Court finds Franconia was liable for the destruction of the airplane.

2. Franconia had no opportunity to prevent the hijacking.

International law imposes an obligation on states to use all reasonable means available to it to protect, prevent, and punish for injury caused to aliens. H. KELSEN, supra at 200; 8 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 817 (1968) (hereinafter cited WHITEMAN, DIGEST). States are not bound to unreasonable standards of conduct. The hijackers boarded the aircraft within Aegea's jurisdiction. The hijacking and homicide of the security guards occurred within Eden's jurisdiction. Franconia had no reasonable opportunity to prevent either the hijacking or the homicide of the security guards.

A state is responsible only for its own acts. 5 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 654 (1943); 8 M. WHITEMAN, DIGEST, supra at 817. A state is not responsible for injuries caused by private individuals, unless it has encouraged or ratified those injuries. DRAFT CONVENTION ON INTERNATIONAL RESPONSIBILITIES OF STATES FOR INJURIES TO ALIENS art. 1, 12, 23 AM. J. INT'L L. Spec. Supp. 142 (1929) (hereinafter cited as DRAFT CONVENTION ON RESPONSIBILITIES); 2 C. HYDE, INTERNATIONAL LAW 980 (2d rev. ed. 1947). The compromis contains nothing to support Barcelona's assertion that Franconia encouraged the BLF. Franconia is not liable for the hijacking, without sufficient proof.

B. Franconia is not liable for the destruction of the aircraft by the hijackers.

1. Franconia had no opportunity to prevent the destruction of the aircraft.

International law requires a state to exercise due diligence to prevent, protect, and punish for injuries to aliens. Laura B. Janes Case (United States v. Mexico), [1927] OPINION OF COMM'RS 108; Cotesworth & Powell Case [1872], Moore 2053, 2082, 2085; Ruden & Co. Case [1868] Moore 1655; W. BISHOP, supra at 773; 1 L. OPPENHEIM, supra at 688. A state is not liable for private crimes committed within its territory, but only for its own acts or omissions. Corfu Channel Case [1949] I.C.J.REP. 22; DRAFT CONVENTION ON RESPONSIBILITIES art. 1, Comment; 1 L. OPPENHEIM, supra at 367. Franconia is not liable for failing to protect the aircraft, unless she had a reasonable opportunity to prevent the destruction. The compromis does not indicate that Franconia had any opportunity to prevent the destruction of the aircraft. Franconia's sole obligation became the apprehension of the hijackers which was fully performed upon their surrender.

2. The Court should not adjudicate this issue without the presence of Eden.

Eden's and Aegea's rights to represent its nationals on this claim should be adjudicated at the same time. Cf. Diversion of Water from the River Meuse [1937] P.C.I.J. Ser. A/B, No. 70; I.C.J. STAT. art. 38, para. 1(c); 3 J. POMEROY, EQUITY JURIDPRUDENCE § 940 (5th ed. Symens 1941). This Court, in the Barcelona Traction Case, left open the possibility for a state to sue in behalf of shareholders, when there is otherwise insufficient contact between the corporation and state of incorporation. Barcelona Traction Case, Belgium v. Spain (New Application: 1962), Second Phase, 9 INT'L LEGAL MATERIALS 269 (1970); Note, Diplomatic Protection, 12 HARV. INT'L L. J. 91, 117 (1971); accord, Nottebohm Case [1955] I.C.J. REP. 24; de Visscher, La protection diplomatique des personnes morales, 102 HAGUE RECUEIL 395, 416 (1962); Ginther, Nationality of Corporations, 16 Osterreichische Zeitschrift fur Offentliches Recht (2d ser.) 27, 75 (1966); League of Nations Codification Comm. Rep. on Nationality of Commercial Corporations and Diplomatic Protection, April 1927, 22 AM. J. INT'L L. Supp. 171, 202-05 (1928). If Eden successfully claimed a right to sue in behalf of its nationals who are shareholders in Aegean National Airlines, Franconia could be subject to double liability. Ziat, Ben Kiran Arbitration (Spain v. Great Britain) 2 U.N.R.I.A.A. 729 (1925); Spillane claim, Decisions of the Great Britain-Mexico Claims Comm. 1930-32, at 72 (1933); Schufeldt claim (United States v. Guatemala), 24 AM. J. INT'L L. 799 (1930).

Barcelona has no standing to claim reparations for the destruction of the aircraft. International law grants reparations in proportion to the injury. 2 M. WHITEMAN, supra at 1549. Barcelona suffered only a nominal loss of its lease-hold interest, if other planes were available for leasing. The compromis does not state sufficient facts to indicate any other injury to Barcelona. Barcelona is not entitled to reparations, unless it was injured. 1 M. WHITEMAN, supra at 284.

C. Franconia has no obligation to extradite the hijackers.

An obligation to extradite must arise from the consent of the demanded state. Factor v. Laubenheimer, 290 U.S. 276, 287 (1933); W. BISHOP, supra at 573; 1 L. OPPENHEIM, supra at 696, 700. Every state exercises exclusive jurisdiction over persons within its territory. W. BISHOP, supra at 535; 1 L. OPPENHEIM, supra at 676, 679. The 1963 Tokyo Convention and the 1933 Barcelona-Franconia Extradition Treaty are the only possible sources of Franconia's consent to extradite the hijackers. Both these treaties and customary international law except political criminals from extradition. 1963 TOKYO CONVENTION art. 2; Compromis at 3 n.2; W. BISHOP, supra at 573; Evans, Reflections Upon the Political Offense in International Practice, 57 AM. J. INT'L L. 1 (1963); Panhuys, supra at 13. Political crimes are offenses which seek the destruction, alteration, or embarrassment of the government of a state. In re Ficorilla, [1951] INT'L L. REP. 345 (No. 110) (Fed. Tribunal of Switz.); Evans, supra at 11, 18; Panhuys, supra at 13. If a state could require the extradition of political criminals, the extraditing state would lose its sovereignty and become a political agent of the requesting state. 2 D. O'CONNELL, supra at 792. Under the Tokyo Convention, 1933 Extradition Treaty, and customary international law,

Franconia's determination that the hijackers were political criminals was binding upon the Applicants. 1963 TOKYO CONVENTION art. 2, 16 at § 2; Compromis at 3 n.2; Panhuys, supra at 13.

Franconia could reasonably determine that the crimes of the hijackers were political offenses. Crimes committed for political purposes are political offenses. In re Ficorilla, [1951] INT'L L. Rep. 345 (No. 110) (Fed. Tribunal of Switz.); Evans, supra at 11, 18; Panhuys, supra at 13. The hijackers are members of a militant insurgent group, the BLF, and sought no private gain. Franconia could reasonably infer that the crimes of the hijackers were committed to bring public attention to the purpose of the BLF.

Franconia could refuse extradition, even if the alleged crimes were not properly political offenses. International law recognizes the right of a state to refuse extradition of criminals subject to prosecution for political crimes. Ex parte Kolczyzinski; [1955] 1 Q.B. 540; Evans, supra at 8; Report of Subcommittee on Unlawful Seizure of Aircraft, §§ 14, 14.1, 15, ICAO Doc. LC/SC SA, Report of Feb. 21, 1969, 8 INT'L LEGAL MATERIALS 245. The political activity of a criminal may deny him a fair trial. Secretary of State Marcy in Kosyta Case, Sept. 26, 1853, cited in 6 M. WHITEMAN, DIGEST, supra at 810. Franconia had a right to refuse extradition of the hijackers because of their possible prosecution as members of the BLF.

D. Franconia has no obligation to prosecute the hijackers.

Franconia has a legal right to refuse to prosecute persons within its territory. International law recognizes no right of one state to demand the enforcement of the laws of another state. 1 L. OPPENHEIM, supra at 328.

To enforce such a demand would deny the territorial sovereignty of a state. 1 L. OPPENHEIM, *supra* at 295. Thus, the Applicants have no right to require Franconia to enforce its Public Law 1234. Furthermore, Franconia is not liable in damages for refusing to prosecute, having exercised its legal right to characterize the hijackers as political offenders. International law does not require the prosecution of political criminals by an asylum state. Panhuys, *supra* at 21. A political criminal may have committed no crime against the asylum state.

IV. AEGEA AND BARCELONA ARE NOT ENTITLED TO REPARATIONS FOR THE DETENTION OF THEIR NATIONALS BY FRANCONIA.

Franconia's detention of the Applicants' nationals was legally justified. Customary international law recognizes the right of a state to detain the passengers and crew of a hijacked aircraft to insure a legal determination of its rights. See Horlick, The Developing Law of Air Hijacking, 12 HARV. INT'L L.J. 33, 43 n.65 (1971); H. KELSEN, supra at 21. The Applicants invaded Franconia's territory and destroyed Franconia's sulphur mine. The AAPA boycott isolated Franconia. The rapid succession of these acts justified Franconia's detention of the passengers in order to prevent further injury and to secure a determination of its legal rights. The detention of passengers created a bargaining position from which Franconia could negotiate.

The passengers were not denied access to Franconia's courts. Access cannot be denied until a request for access is made. Ambatielos Arbitration (Greece v. United Kingdom), 50 AM. J. INT'L L. 674, 678 (1956); J. STARKE, supra at 268. The compromis does not indicate that a request was made.

Franconia was not obligated to grant any of the passengers a special privilege of passage. International law does not recognize a special privilege of passage for private persons. 1 L. OPPENHEIM, supra at 806. Special privileges are granted to officials while en route to perform official duties. The compromis does not indicate that Barcelona's ambassador was en route on official duties. Nor does it indicate that the United Nations employee was an "official" entitled to special privileges under the Charter. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS arts. 4 at § 23, [1946-47] 1-2 U.N.T.S. 16 Furthermore, the Applicants do not have standing to assert the rights of a United Nations

official, as those rights inure only to the benefit of the United Nations.
Advisory Opinion on Reparation for Injuries Suffered in the Service of
the United Nations, [1949] I.C.J. REP. 174. Franconia might be subject
to double liability, if the Applicants were permitted to recover for the
injury to a U.N. employee, since the U.N. is not a party to this action.

V. THE APPLICANTS ARE AT LEAST IN PARI DELICTO AND NOT ENTITLED TO REPARATIONS.

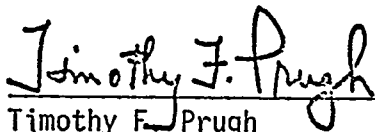
A general principle of law recognized by civilized nations denies reparations between parties equally guilty of misconduct. Diversion of Water from the River Meuse, [1937] P.C.I.J. Ser. A/B, No. 70; 3 J. POMEROY, supra at § 940. See I.C.J. STAT. art. 38, para. 1(c). A guilty party cannot complain of the guilt of another. Aegea and Barcelona violated international law by their destruction of Franconia's mine and ratification of the AAPA boycott. Thus, the Applicants' delicts bar their recovery, even if the Court finds that Franconia violated international law.

Franconia is, nonetheless, entitled to substantial reparations from the Applicants. International law grants reparations to a state in pari delicto when the injuries to that state are seriously disproportionate to those of the other guilty party. The Naulila Case, [1927-28] ANN. DIG. PUB. INT'L L. CASES 4 (No. 360). The reparations are granted to equalize the injury between guilty parties. Franconia's injuries would exceed those of the Applicants by approximately \$40 million, even if the cost of the aircraft is set-off against Franconia's claims.


CONCLUSION

Franconia respectfully requests

- (1) A declaration by the Court that Franconia is legally entitled to the reparations it claims, and
- (2) A declaration by the Court that Aegea and Barcelona are not entitled to the reparations claimed by them.



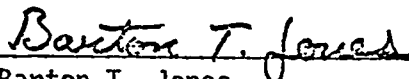
Timothy F. Prugh



Charles G. Burr III

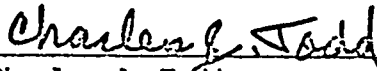


Richard A. Sinkfield



Barton T. Jones

Agents for Franconia



Charles J. Todd

On the Memorial

INDEX OF AUTHORITIES

Treaties and Other International Agreements:

	Page
AIR LAWS AND TREATIES OF THE WORLD, U.S. SEN. COMM. ON COMMERCE, Vol. I-III at 261, 420. Washington, 1965.....	11
CHICAGO CONVENTION ON INTERNATIONAL CIVIL AVIATION art. I, II, Dec. 7, 1944, T.I.A.S. No. 1591.....	8
CONVENTION OF OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT art. 17(4)(c), 20 Sept. 14 ICAO Doc. 8364 (1963).....	11, 21, 22
CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS arts. 4 at § 14, 6 at § 23, [1946-47] 1-2 U.N.T.S. 16.....	24
DRAFT CONVENTION ON INTERNATIONAL RESPONSIBILITIES OF STATES FOR INJURIES TO ALIENS arts. 1, 12, 23 AM. J. INT'L L. Spec. Supp. 142 (1929).....	19
GENEVA CONVENTION ON THE HIGH SEAS art. 15, done at Geneva, April 29, 1958, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82.....	12
I.C.J. STAT.....	1, 9, 17, 20, 26
OAS CHARTER art. 16 (1948).....	16
Report of League of Nations Committee of Enquiry (Lytton Comm.), League of Nations Doc. No. 1932. VII 12, at 119-20.....	15
S.C. Res. of March 29, 1955 (U.N. News Release No. 16/55).....	9
U.N. CHARTER.....	9, 10, 16
U.N. Res. 2131, Dec. 21, 1965.....	16
UNIVERSAL POSTAL CONVENTION CONST. art. I, § 1.....	17
THE VIENNA CONVENTION ON THE LAW OF TREATIES art. 34, <u>open for signature</u> , May 29, 1969, 63 AM. J. INT'L L. 881 (1969).....	10, 11

Cases:

<u>Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations</u> , [1949] I.C.J. 174.....	25
<u>Barcelona Traction Case, Belgium v. Spain (New Application: 1962)</u> , Second Phase, 9 INT'L LEGAL MATERIALS 269 (1970).....	20

	Page
<u>Bellon Case</u> , [1929-30] ANN. DIG. No. 104.....	14
<u>Case Concerning the Factory at Chorzow</u> , [1921] P.C.I.J. Ser. A, No. 8.....	9, 16, 17
<u>Chamizal Arbitration</u> , HUDSON, CASES ON INTERNATIONAL LAW 457, 460 (2d ed. 1936).....	11
<u>Charles Adrian Van Bokkelen</u> (United States v. Haiti), [1884] FOR. REL. 306.....	17
<u>Corfu Channel (Merits) Case</u> [1949] I.C.J. REP. 18.....	8, 19
<u>Cotesworth & Powell Case</u> [1872], MOORE 2053, 2082, 2085.....	19
<u>Diversion of Water from the River Meuse</u> , [1937] P.C.I.J. Ser. A/B, No. 70.....	20, 26
<u>Ex parte Kolczynski</u> , [1955] I.Q.B. 540.....	22
<u>Factor v. Laubenheimer</u> , 290 U.S. 276, 287 (1933).....	21
<u>Heirs of Hart Mix</u> , MS DEP'T STATE, file No. 424.11, M. 69.....	18
<u>In re Ficorilla</u> , [1951] INT'L L. REP. 345 (No. 110) (Fed. Tribunal of Switz.).....	21, 22
<u>International Peace Treaties (Second Phase) Case</u> , [1950] I.C.J. Rep. 228.....	16
<u>International Status of South-West Africa</u> , [1950] I.C.J. REP. 135...	11
<u>John D. Metzger & Co.</u> (United States v. Haiti) [1901] FOR. REL. 262.	17
<u>Joseph Wisnowski</u> , MS DEP'T STATE, file No. 411.60cw76.....	18
<u>Laura B. Janes Case</u> , (United States v. Mexico) [1927] OPINION OF COMM'RS 108.....	19
<u>Lynching of Italians in New Orleans</u> , 6 J. MOORE, INT'L L. DIG. 837 (1906).....	15
<u>The Manouba</u> (France v. Italy), P. Ct. Arb. SCOTT, THE HAGUE COURT REPORTS 342 (1916).....	17
<u>Mrs. Arthur Jones</u> , MS DEP'T STATE, file No. 439.11.....	18
<u>Nottebohm Case</u> [1955] I.C.J. REP. 24.....	20
<u>Pickering v. Rudd</u> , 4 Camp. 219, 1 Stark. 56 (1815).....	9
<u>Ruden & Co. Case</u> [1868] MOORE 1655.....	19

	Page
<u>Sanopoulos v. Bulgarian State</u> , 7 Rec des decis. des trib. arb. mixtes 47 (1906).....	16
Secretary of State Marcy in <u>Kosyta Case</u> , Sept. 26, 1853, <u>cited in</u> 6 M. WHITEHAN, DIG. of INT'L L. 810 (1968).....	22
<u>Smith v. London & Southwestern Ry. Co.</u> , L.R. 6 C.P. 14 (1870).....	13
<u>Spillane claim</u> , Decisions of the Great Britain-Mexico Claims Comm. 1030-32, at 72 (1930).....	20
<u>S. S. Lotus</u> , P.C.I.J. Ser. A, No. 10 (1927), 2 HUDSON, WORLD CT. REP. 20 (1935).....	8
<u>The Caroline Case</u> (1837) 2 J. MOORE, INT'L L. DIG. 409 (1906).....	10
<u>The I'm Alone</u> (Canada v. United States), Dep't State Arb. Ser. No. 2, 2 G. HACKWORTH DIGEST OF INTERNATIONAL LAW 703 (1941).....	8
<u>The Naulila Case</u> , [1927-28] ANN. DIG. PUB. INT'L L. CASES 4 (No. 360).....	26
<u>Thomas Y. Youmans Case</u> , [1925-26] ANN. DIG. 3 (No. 162).....	14
<u>Zafiro Case</u> , [1925] NEILSEN REP. 578, 583-85.....	16
<u>Ziat, Ben Kiran Arbitration</u> (Spain v. Great Britain) 2 U.N.R.I.A.A. 729 (1925).....	20
 <u>Treatises and Digests:</u>	
W. BISHOP, INTERNATIONAL LAW (3d ed. 1962).....	8, 15, 16, 19, 21
E. BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD 217 (1928).	13
D. BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW (1958).....	9, 10, 12
J. BRIERLY, THE LAW OF NATIONS (6th ed. 1963).....	12, 13
I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 298, 301 (1963).....	9
W. COPLIN, THE FUNCTIONS OF INTERNATIONAL LAW (1966).....	12, 18
2 DIGEST OF ENGLISH CIVIL LAW § 798 (4th ed. 1947).....	9
5 G. HACKWORTH DIGEST OF INTERNATIONAL LAW 654 (1943).....	19

	Page
2 C. HYDE, INTERNATIONAL LAW 980 (2d rev. ed. 1947).....	19
H. JACOBINI, INTERNATIONAL LAW 137 (rev. ed. 1968).....	13
H. KELSEN, THE LAW OF THE UNITED NATIONS (1964).....	10,18,24
L. McNAIR, THE LAW OF TREATIES 426 (1961).....	11
6 J. MOORE, DIGEST OF INTERNATIONAL LAW 762 (1906).....	14
1 D. O'CONNELL, INTERNATIONAL LAW (1965).....	11, 21
1 L. OPPENHEIM, INTERNATIONAL LAW (8th ed. H. Lauterbach ed. 1963)..	8,12,13,14, 15,19,21,22, 23,24
3 J. POMEROY, EQUITY JURISPRUDENCE § 940 (5th ed. Symens 1941).....	20, 26
N. POULANTZAS, THE RIGHT OF HOT PURSUIT IN INTERNATIONAL LAW (1969).	8, 11, 12, 1
W. PROSSER, LAW OF TORTS (3d ed. 1964).....	9, 13
G. SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 173 (5th ed. 1967).	9
C. SHAWCROSS & K. BEAUMONT, ON AIR LAW Appendix C at 639 (3d ed. 1969).....	13
J. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 155 (6th ed. 1967)..	8, 12, 24
3 E. VATTEL, LAW OF NATIONS § 204, at 8 (1758 ed. C. Fenwick transl. 1916).....	8
G. VON GLAHN, LAW AMONG NATIONS 438 (1970).....	10
H. WHEATON, ELEMENTS OF INTERNATIONAL LAW § 429 at 521-24 (8th ed. 1866).....	9
1 M. WHITEMAN, DAMAGES IN INTERNATIONAL LAW (1937).....	17, 18, 21
8 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW (1968).....	18, 19

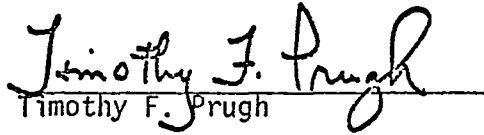
Journals:

<u>Ambatielus Arbitration (Greece v. United Kingdom), 50 AM. J. INT'L L. 674, 678 (1956).....</u>	24
<u>Evans, Reflections Upon the Political Offense in International Practice, 57 AM. J. INT'L L. 1 (1963).....</u>	21, 22
<u>Ginther, Nationality of Corporations, 16 Osterreichische Zeitschrift fur Offentliches Recht (2d ser.) 27, 75 (1966).....</u>	20

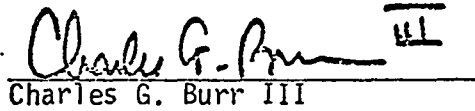
	Page
Harvard Research in International Law, <u>Responsibility of States</u> , 23 AM. J. INT'L L. Spec. Supp. 190-91 (1929).....	15
Horlick, <u>The Developing Law of Air Hijacking</u> , 12 HARV. INT'L L.J. 33, 43 n.65 (1971).....	24
League of Nations Codification Comm. Rep. on Nationality of Commercial Corporations and Diplomatic Protection, April 1927, 22 AM. J. INT'L L. Supp. 171, 202-05 (1928).....	20
Panhuis, <u>Aircraft Hijacking and International Law</u> , 9 COLUM. J. TRANSNAT'L L. 1 (1970).....	12, 21, 22,
Pluncknett, <u>Case and the Statute of Westminster II</u> , 31 COLUM. L. Rev. 778 (1931).....	9
Report of Subcommittee on Unlawful Seizure of Aircraft, §§ 14, 14.1, 15, ICAO DOC. LC/SC SA, Report of Feb. 21, 1969, 8 INT'L LEGAL MATERIALS 245.....	22
de Visscher, <u>La protection diplomatique des personnes morales</u> , 102 HAGUE RECUEIL 395, 416 (1962).....	20
Schufeldt claim (United States v. Guatemala), 24 AM. J. INT'L L. 799 (1930).....	20
Sohn & Baxter, <u>Responsibility of States for Injuries to the Economic Interests of Aliens</u> , 55 AM. J. INT'L L. 546 (1961).....	15
Note, <u>Diplomatic Protection</u> , 12 HARV. INT'L. L. J. 91, 117 (1971)...	20

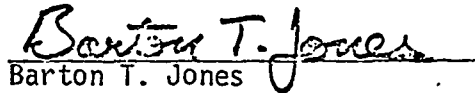
CERTIFICATE AS TO LENGTH

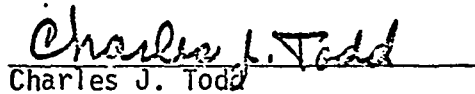
We certify that by our count, this memorial contains fewer than
4,500 words.


Timothy F. Prugh


Richard A. Sinkfield


Charles G. Burr III


Barton T. Jones


Charles J. Todd