
IN THE
INTERNATIONAL COURT OF JUSTICE

MARCH 1982

KINGDOM OF SEPTENTRION,

Applicant,

v.

PEOPLE'S DEMOCRATIC REPUBLIC
OF MERIDION,

Respondent.

MEMORIAL FOR APPLICANT

Of Counsel:

Barbara J. Gaden
Steven P. Vincent

Team No. 8 *Fordham U.*

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iv
STATEMENT OF JURISDICTION	viii
STATEMENT OF THE FACTS	ix
QUESTIONS PRESENTED	xiv
SUMMARY OF ARGUMENT	xv
ARGUMENT	
I. THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION IS RESPONSIBLE FOR ACTS COMMITTED BY ITS REVOLUTIONARY GOVERNMENT AND BY REVOLUTIONARY FORCES IN VIOLATION OF CUSTOMARY INTERNATIONAL LAW AND OBLIGATIONS ASSUMED BY THE FORMER GOVERNMENT . . . . .	.1
A. <u>The force of international legal obligations was uninterrupted during and after the internal upheavals in Meridion, and automatically bound the revolutionary government when it assumed power.</u> . . . . .	.1
B. <u>The multilateral humanitarian treaties to which the Republic of Meridion became a party require a high presumption of continuity when one state succeeds another.</u> . . . . .	.2
C. <u>The People's Democratic Republic is responsible for unlawful acts committed by the MLA before the new government came into power.</u> . . . . .	.4
II. BY WANTONLY DISREGARDING THE STANDARDS OF HUMANITARIAN TREATMENT DUE BIS PERSONNEL, THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION HAS INCURRED LIABILITY TO SEPTENTRION. . . . .	.4
A. <u>The international impact of Meridion's actions dictate that they be judged by international laws and agreements governing international conflicts.</u> . . . . .	.5
B. <u>Meridion breached its international obligation to protect human rights by illegally killing, incarcerating and torturing BIS personnel</u> . . . . .	.6

C. The People's Democratic Republic must make reparation to the Kingdom of Septentrion for the injuries suffered by BIS personnel 9

1. This action is properly brought by the Kingdom of Septentrion on behalf of all BIS personnel injured by the revolutionary government in Meridion 9

a. Septentrion's position in a family of nations concerned with human rights gives it standing to request a declaration on behalf of Meridionese BIS personnel. 9

b. The action on behalf of BIS personnel is timely brought before this Court, as local remedies have either been exhausted or do not afford opportunity for a just hearing 10

2. Septentrion is entitled to an award of damages for injuries sustained by Septentrionese BIS personnel, and immediate repatriation of those now held prisoner in Meridion. 11

III. THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION VIOLATED ITS INTERNATIONAL OBLIGATIONS BY CAUSING THE MASS MIGRATION OF ITS PEOPLE FROM MERIDION, RESULTING IN ECONOMIC INJURY TO SEPTENTRION. 12

A. The People's Democratic Republic of Meridion is responsible for the conditions which caused the massive displacement of its citizens 13

B. This Court should extend accepted principles of International Reparations by requiring Meridion to bear the financial burden of sustaining their citizen's until their status has been determined 14

C. The Protocol relating to the status of refugees requires that Septentrion not return to the People's Democratic Republic any citizens who fear persecution. Therefore, compensation should include all costs incurred by the refugees in Septentrion pending determination of their status and/or until resettlement can be secured here or elsewhere. 15

D. Compensation will deter the People's Democratic Republic from committing acts which will result in continued mass migrations17

E. Denationalization cannot be used by the People's Republic to evade its international obligation, including its duty to make reparations to Septentrion18

IV. SEPTENTRION'S ACTIONS IN DETAINING MERIDIONESE CITIZENS AND DECLINING TO RESETTLE DETAINEES IN SEPTENTRION WERE CONSISTENT WITH PRINCIPLES OF INTERNATIONAL LAW19

A. The placement of 40,000 Meridionese citizens in temporary resettlement camps pending determination of their status was in accordance with the provisions of the Protocol and the declaration of human rights.19

B. The unavailability of judicial remedies to those in temporary resettlement camps does not amount to a denial of justice.20

C. Septentrion is not under a duty to resettle the refugees permanently or provisionally in its society21

D. The Protocol does not apply to the returning of Refugees still on the high seas22

E. Septentrion's interception of the vessel carrying Meridionese citizens was consistent with the high seas convention and international law23

CONCLUSION.24

TABLE OF AUTHORITIES

Page

TREATIES AND OTHER INTERNATIONAL AGREEMENTS

Convention of the High Seas, Apr. 29, 1958, 2 U.S.T. 2312,
T.I.A.S. No. 5200, 450 U.N.T.S. 82. 24

Geneva Convention Relative to the Protection of Civilian
Persons in Time of War, done Aug. 12, 1949, 6 U.S.T. 3516,
T.I.A.S. No. 3365, 75 U.N.T.S. 284. 3,5,6,7,8

International Covenant on Civil and Political Rights, adopted
Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16)
49, U.N. Doc. A/6316 (1966) (entered into force Mar. 23,
1976) 3,7,8,16,20

International Covenant on Economic, Social, and Cultural
Rights, adopted December 16, 1966, G.A. Res. 2200A, 21 U.N.
GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966) (entered
into force Jan. 3, 1976). 3,8,16

Protocol Relating to the Status of Refugees, Jan. 31, 1967,
19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 15,19,22

Statute of the International Court of Justice 3

Universal Declaration of Human Rights, G.A. Res. 217, U.N.
Doc. A/810 at 71 (1948) 16,19

Vienna Convention on the Law of Treaties, U.N. Doc. A/Conf.
39/27 (1969). 20

Vienna Convention on Succession of States in Respect of
Treaties, adopted Aug. 23, 1978, U.N. Doc. 80/31. 2

CASES

Aguilar-Armory and Royal Bank of Canada Claims (Gr. Brit.
v. Costa Rica) (Tinoco claims), 1 R. Int'l Arb. Awards
369 (1923). 1,2

Asylum Case, 1950 I.C.J. 266. 13

Boffolo case (Italian-Venezuelan Mixed Claims Commission),
10 R. Int'l Arb. Awards 528 (1903). 7

Case Concerning U.S. Diplomatic and Consular Staff in
Tehran (U.S. v. Iran), 1980 I.C.J. 2. 2

	<u>Page</u>
Case of William Way (U.S. v. Mex.), <u>reprinted in</u> W. BISHOP, JR., INTERNATIONAL LAW 646 (2d ed. 1962).	8
B.E. Chattin (U.S.A.) v. United Mexican States, 4 R. Int'l Arb. Awards 282 (1927).	8
Chorzow Factory Case (Merits), P.C.I.J. ser. A, No. 17.	11,12,14
Chorzow Factory Case (Jurisdiction), P.C.I.J. ser. A, No. 9	11
<u>Church v. Hubbart</u> , 2 Cranch 187 (1804).	23
<u>Diminich v. Esperdy</u> , 299 F.2d 244 (2d Cir. 1961).	17
<u>Dunat v. Harvey</u> , 297 F.2d 744 (3d Cir. 1961).	17
Fisheries Jurisdiction Case (W. Ger. v. Ice.), Separate Opinion of Judge Sir Humphrey Walcock, 1974 I.C.J. 233.	11
George W. Hopkins (U.S.A.) v. United Mexican States, 4 R. Int'l Arb. Awards 41 (1926)	2
International Status of Southwest Africa, 1950 I.C.J. 128	4
<u>Leng May Ma v. Barber</u> , 357 U.S. 185 (1958).	20
Mavrommatis Palestine Concessions (Jurisdiction), P.C.I.J. ser. A, No. 2 (1924).	9
Naim Molvan, Owner of Motor Vessel "Asya" and Attorney General for Palestine, 1948 A.C. 351	23,24
Nottebohm Case (Lichtenstein v. Guat.), 1955 I.C.J. 4	9
Reparations for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174	10
<u>Soric v. Flagg</u> , 303 F.2d 289 (7th Cir. 1962).	17
Trail Smelter Arbitration (U.S. v. Canada) 3 R. Int'l Arb. Awards 1905 (1949).	13
 <u>TREATISES AND DIGESTS</u>	
E. BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD (1915).	1,4,8,10
E. BORCHARD, THE LAW OF RESPONSIBILITY OF STATES FOR DAMAGES DONE IN THEIR TERRITORY TO THE PERSON OR PROPERTY OF FOREIGNERS, 23 AM. J. Int'l (Spec. Supp. 1919) 131.	13,20

	<u>Page</u>
I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (2d ed. 1973) . . . . .	.18
C. EAGLETON, THE RESPONSIBILITY OF STATES IN INTERNATIONAL LAW (1928). . . . .	.13
GRAHL-MADSEN, THE STATUS OF REFUGEES IN INTERNATIONAL LAW (1966) Vols. I & II . . . . .	.16,17,19,21,22
5 HACKWORTH, DIGEST OF INTERNATIONAL LAW 526 (1927) . . . . .	.8,10,11,12
H. LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW (1947)	2,5
D.P. O'CONNELL, INTERNATIONAL LAW (2d ed. 1970) Vols. I & II . . . . .	.1,5
OPPENHEIM'S INTERNATIONAL LAW (8th ed. by Lauterpacht, 1955) . . . . .	.13,14,24
2 G. SCHWARZENBERGER, INTERNATIONAL LAW (1968).	4,5
VATTEL, LAW OF NATIONS 161 (J. Chitty ed. 1858)	9
1 WHITEMAN, DAMAGES IN INTERNATIONAL LAW (1937) . . . . .	.12

JOURNALS

Address of Hon E. Root, 4 AM. SOC'Y INT'L L. (PROC.) 16 (1910).	8
Fragonal, <u>The Refugee: A Problem of Definition</u> , 3-4 CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW 55 (1970-72) . . . . .	.16
Frank, <u>Effect of the 1967 U.N. Protocol on the Status of Refugees</u> , 11 INT'L LAWYER 291 . . . . .	.22
C.W. Jenks, <u>State Succession in Respect of Law Making Treaties</u> , 29 BRIT. J. INT'L L. 105 (1952)	3
Nayar, <u>Asylum in International Law</u> , 17 ST. LOUIS UNIVERSITY LAW JOURNAL 17, 29 (1972-73) . . . . .	.22
Pugash, <u>Dilemma of the Sea Refugee: Rescue Without Refuge</u> , 18 HARV. INT'L L.J. 577 (1977).	21,22
Wain, <u>The Indochina Refugee Crisis</u> , 58 FOREIGN AFF. 160 . . . . .	.14,15,17

MISCELLANEOUS PAPERS AND DOCUMENTS

Draft Articles on State Responsibility, <u>reprinted in Report of the International Law Commission on the work of its 32nd Session, U.N. Doc. A/35/10, 2 Y.B. Int'l L. Comm'n</u> 26 (1980)	9
---	---

Draft Articles on the Succession of States in Respect of
Treaties, reprinted in Report of the International
Law Commission on the work of its 26th Session, U.N.
Doc. A/9610/Rev.1 (1974) 2 Y.B. Int'l L. Comm'n 157
("I.L.C. Report") 2,3

G.A. Res. 3059 (XXVIII), U.N. Doc. A/9249 (1973). 7

G.A. Res. 32/62 (1977) 7

International Commission of Jurists, The Application in
Latin America of International Declarations and Conven-
tions Relating to Asylum (1975) at 59 23

L.A. Times, July 22, 1979 at 1, col. 1. 13

Refugees or Prisoners, Newsweek, Feb. 2, 1982 17,21

Report of the Commissioner General of the U.N. Relief and
Works Agency for Palestine Refugees in the Near East.
1 July 1979-30 June, 1980, 35 U.N. GAOR Supp. (No. 13)
at 2, U.N. Doc. A/35/13 (1980). 15

Report of the Committee of International Assistance to
Refugees, League of Nations Doc. C.2, M.2, 1936, XII. 14

Report of the Committee of International Assistance to
Refugees, League of Nations Doc. C.72, 1936, XII. 18

Report of the United Nations High Commissioner for Refugees,
25 U.N. GAOR Supp. (No.12) at 12, U.N. Doc. A/8012 15

Report of th United Nations High Commissioner for Refugees,
35 U.N. GAOR Supp (No.12) at 74-75, U.N. A/35/12 (1980) 14

U.N. Doc. A/CN.4/L.215 and Corr.2, reprinted in I.L.C.
Report 172 n.57 3

STATEMENT OF JURISDICTION

The parties submit the present dispute to this Court by special agreement, pursuant to Article 40 of the Statute of the International Court of Justice, which provides:

1. Cases are brought before the Court, as the case may be, either by notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

Moreover, Article 36 of the Statute of the International Court provides that the jurisdiction of the Court comprises all cases which the parties refer to it.

It must therefore follow that the Court has jurisdiction to resolve the present dispute. In addition, by virtue of Articles 36 and 38 of the Statute, the Court may settle all the questions presented.

STATEMENT OF THE FACTS

The Republic of Meridion was formerly known as New Hibernia, a colony of Septentrion. After peacefully gaining its independence in 1964, Meridion expressly reaffirmed all treaty commitments made on its behalf, joined the Septentrionese Confederation of States, and was granted membership in the United Nations (where Septentrion had been a member since 1945) (R.1-2). In due course, Meridion became a party to a number of multilateral, humanitarian treaties: the Geneva Conventions of 1949, the International Covenant on Civil and Political Rights, the International Covenant of Economic, Social and Cultural Rights, and the Protocol Relating to the Status of Refugees. Septentrion is a party to the Geneva Conventions and the Refugee Protocol, and has signed but not yet ratified the two Covenants (R.2).

Throughout the years, the Benefactors International Society, Ltd. (hereinafter "BIS"), a charitable organization incorporated in Septentrion, has been operating health and educational facilities in Meridion. The organization is run primarily by citizens of Septentrion and has also employed some Meridionese personnel (R.1). Relations between BIS and the Meridionese government have remained constant before and after the country's independence, except for the issuance of special residency permits to Septentrionese BIS personnel forbidding participation in political activity (R.2).

In 1970, political unrest in Meridion led to a presidential proclamation of a state of emergency, which is still in effect. By 1976, the Southeast Province had essentially fallen into the control of the Meridionese Liberation Army (hereinafter "MLA"), the source of the turmoil

(R.2). The local leader of the MLA issued Decree #181 concerning certain BIS facilities in the area. The Decree Ordered:

- 1) that BIS personnel wear the insignia of the revolutionary forces, and that the MLA flag be displayed outside BIS premises;
- 2) that MLA militia have priority access to BIS medical facilities over all other persons;
- 3) that BIS cease publication of newsletters at its rural community centers, which have been "slanderous to the cause of the Meridionese revolution;" and
- 4) that BIS staff refrain from "speaking in the Septentrionese language, encouraging the conversion of Meridionese nationals to the Septentrionese religion, and generally performing any act inconsistent with the liberation of the great Meridionese people" (R.3).

BIS personnel accepted some of these provisions and rejected others (R.3).

In September of that year, a BIS hospital was the site of a massacre led by persons wearing MLA uniforms (R.3). Thirty-five patients, possibly soldiers of the Republic, were killed, and twenty BIS personnel were seized and forcibly held incommunicado by MLA forces. The Septentrionese Ambassador delivered a formal complaint to the Meridionese Foreign Office, which simply denied the Republic's responsibility (R.4).

As the MLA moved toward the capital in early 1977, they captured all BIS facilities, killing and injuring many of the occupants. At one of these, a school in the Central Province, the MLA forces imprisoned the Septentrionese director. They beat him severely until he confessed that the school had been used as a hiding place for local Republican officials. Sub-

sequently, the director and three of his staff were given a mock trial by a "People's Court" in which they were denied counsel and the right to testify on their own behalf. They were convicted of violating Decree No. 181. Three were summarily executed by MLA firing squads, and fourth died in custody following electric shock "treatments" (R.4).

A mass migration of Meridionese citizens occurred as the MLA approached the capital. Forty-thousand persons made their way toward Septentrion, bound by air and sea (R.4). While 3,000 were lost at sea, a full 37,000 nationals reached Septentrion and had to be placed in temporary resettlement camps (R.5-6). As 5,000 more Meridionese fled their country in boats bound for Septentrion, they were intercepted by Septentrionese Coastal Service while on the high seas. Those deemed strong enough to make the return voyage were escorted back to Meridionese waters, but as many as 1,000 deemed incapable of enduring the trip were taken on board and delivered to the resettlement camp. Adequate food and medical facilities were provided with the necessarily cramped quarters. Men were, however, given separate housing from the women and children. Those Meridionese citizens who had marketable skills or family in Septentrion were permitted to leave the resettlement camps, and non-nationals were allowed to proceed directly to their own countries (R.6).

Their representatives assert that the 38,000 Meridionese people who fled to Septentrion fall into three categories:

- 1) those wanted by the new Meridionese government for suspected counter-revolutionary activity;
- 2) those whose Meridionese citizenship had been revoked by the revolutionary government following their departure; and
- 3) those who felt compelled to leave Meridion for economic reasons (R.6-7).

The Interior Ministry would not commence discussion with any of these persons

whose status had not been reviewed and who therefore posed a possible security risk (R.7). Septentrion's immigration law does not make available judicial remedies for those persons whose status has not been regularized and who are placed in temporary camps (R.6).

On June 18, the rebel forces took over the capital. The next day the new government issued Revolutionary Order No. 1, proclaiming the establishment of the People's Democratic Republic of Meridion, and declaring in part:

- 2) We hereby renounce all ties to the Septentrionese oppressor, and resign from the Confederation of States.
- 3) The People's Democratic Republic congratulates and thanks the courageous Meridionese Liberation Army for carrying our Revolution to victory.
- 4) The Revolutionary Government shall now begin to investigate and to bring to justice the perpetrators of all antirevolutionary acts committed by foreigners and their lackeys, and especially by those posing as benefactors of our people.
- 5) A state of emergency is hereby declared, and the People's Democratic Republic shall be under a regime of martial law until every enemy of the Revolution is eliminated.
- 6) All counter-revolutionary elements fleeing from the shores of our nation are hereby declared enemies of the people and may be stripped of citizenship in our Democratic Republic (R.5).

Three months later, the new "People's Revolutionary Court" put on trial all senior Septentrionese officials for charges including:

- 1) violations of Decree No. 181;
- 2) cultural genocide of the Meridionese people;
- 3) publication of seditious material; and
- 4) violations of the terms of their residence permits (R.7).

The defendants were not allowed to retain the attorneys they had selected, whom the judge deemed "security risks." Instead the judge himself appointed counsel. Much of the evidence presented against these defendants was not subject to cross-examination, as it was in writing and kept anonymous to "protect the identity of confidential sources." The defendants, many of whom were more than sixty-five years old, were convicted of all the charges against them and sentenced to terms of ten to thirty years at hard labor (R.7). Their opportunities for appeal were defeated by their own appointed counsel who did not file timely appeals (R.8).

The governments of the Kingdom of Septentrion and of the People's Democratic Republic of Meridion have agreed to submit the disputes arising from the foregoing facts to the International Court of Justice.

QUESTIONS PRESENTED

- I. Whether the People's Democratic Republic of Meridion is bound by international obligations assumed by its predecessor government, and consequently responsible for abuses of these obligations committed by its revolutionary government and the forces which brought it to power?
- II. Whether the People's Democratic Republic of Meridion has violated international laws respecting human rights, and if in doing so has incurred liability to the Kingdom of Septentrion?
- III. Whether the People's Democratic Republic of Meridion breached its international obligations when it caused a mass migration of its citizens to Septentrion, and if in doing so incurred liability for the economic injury to the Kingdom of Septentrion?
- IV. Whether Septentrion's actions in detaining Meridionese citizens, declining to resettle detainees in Septentrion and returning others to Meridionese waters, were consistent with principles of international law?

SUMMARY OF ARGUMENT

Generally accepted principles of customary law dictate that the revolutionary government in Meridion automatically succeeded to the international obligations assumed by its predecessor government. The change within Meridion affected neither the goals sought nor the obligations imposed by the multilateral humanitarian treaties, and so they are presumed to remain in force. Furthermore, when the People's Democratic Republic of Meridion was established as the government of Meridion, it became responsible retroactively, both by implication and by express ratification, for the actions of the MLA from the start of its revolutionary activities.

The international impact of Meridion's actions dictate that they be judged by the standards of international conflicts. Thus, one must look at the broadest relevant provisions of the Geneva Conventions and the International Covenants, as well as customary law, in judging which violations occurred. However, Meridion's acts against Septentrionese citizens -- in torturing, killing and incarcerating BIS personnel -- demonstrated a wanton disregard and violation of even the most restrictive provisions of international laws. Therefore, in this action properly and timely brought by Septentrion on behalf of all injured BIS personnel, the People's Democratic Republic is obligated to repatriate prisoners immediately and award damages to the Kingdom of Septentrion.

The People's Democratic Republic is responsible for the conditions which caused the mass migration of its citizens to Septentrion. This migration resulted in economic injury to Septentrion, requiring Meridion to make appropriate reparations pursuant to accepted principles of international law.

The migrants, based upon the facts of this case, are likely to be classified as political refugees. Therefore, the Protocol Relating to the Status of Refugees mandates that their status be determined and that all

political refugees be resettled in countries other than Meridion. Septentrion has expended its resources in sustaining the Meridionese as they await their processing.

Septentrion's detention of the Meridionese refugees was consistent with international law, all applicable conventions, and practical in light of the circumstances. Several provisions of the Protocol allow a nation to take those measures necessary to preserve the best interests of all the parties involved. Septentrion was faced with the very difficult task of housing and feeding staggering numbers of unexpected people and is required to process and resettle all of them as well.

Septentrion's inability to resettle these detainees into their own society is consistent with international law. Neither international law nor any convention guarantees a right to permanent asylum. Furthermore, provisional asylum is not appropriate in this case. Notwithstanding the fact that some migrants may be troublemakers or may abscond, the Meridionese speak a different language, lived in a totally different culture and never worked in an industrial country. Those few with relatives in Septentrion or possessing special skills were allowed to leave the camps because they did not pose a danger to Septentrion or themselves.

Septentrion's interception of a Meridionese refugee vessel on the high seas was consistent with the High Seas Convention and case law. Septentrion's reasonable assessment that the boat was headed for its shoreline, buttressed by the fact that it flew no flag, justified Septentrion's action in safely escorting the vessel back to Meridionese waters.

I. THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION IS RESPONSIBLE FOR ACTS COMMITTED BY ITS REVOLUTIONARY GOVERNMENT AND BY REVOLUTIONARY FORCES IN VIOLATION OF CUSTOMARY INTERNATIONAL LAW AND OBLIGATIONS ASSUMED BY THE FORMER GOVERNMENT

- A. The force of international legal obligations was uninterrupted during and after the internal upheavals in Meridion, and automatically bound the revolutionary government when it assumed power.

The revolution which ended in Meridion in mid-June of 1977 succeeded only in establishing a new government for that country. The change of government, while certainly causing a major disruption of Meridion's domestic order, is a purely internal affair, and as such, does not affect Meridion's international personality. While acting as arbitrator between Great Britain and Costa Rica, Chief Justice Taft of the United States Supreme Court stated that "the same government continues internationally but not the internal law of its being" *Aguilar-Armory and Royal Bank of Canada Claims (Gr. Brit. v. Costa Rica) (Tinoco claims)*, 1 R. Int'l Arb. Awards 369, 381-2 (1923) (hereinafter *Tinoco claims*). Customary international law therefore dictates that, following its change of government, the People's Democratic Republic succeeds to the treaty obligations assumed by the former government. 1 D.P. O'CONNELL, *INTERNATIONAL LAW* 394 (2d ed. 1970). E. BORCHARD, *THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD* 205-06 (1915).

Clearly the People's Democratic Republic has established itself as the sole sovereign entity in Meridion since the conclusion of the revolution: no force opposes it and all within its influence respect its control. It must therefore be regarded as the government successor to the former Republic of Meridion. *Tinoco claims, supra* at 381-2.

Because Meridion's change of government was an internal concern, the succession of the People's Democratic Republic to the obligations assumed by the Republic of Meridion is unaffected by whether or not Septentrion impliedly recognized the revolutionary government when it acceded to certain

provisions of Decree No. 181 or by any later actions or statements. George W. Hopkins (U.S.A.) v. United Mexican States, 4 R. Int'l Arb. Awards 41 (1926). Similarly, it is unaffected by the fact that the change was accomplished in violation of the country's constitution and that the extent of the change may have established an entirely new constitutional order and form of government within Meridion. Tinoco claims, supra p.1, at 381, Accord, H. LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 92 (1947). This is not only reasonable, but preferable because:

(w)ithin the State the revolution destroys irrevocably the continuity of the legal system. . . . It is, in fact, international law which preserves the legal continuity of the State. It does so by laying down the rule that the State and its obligations remain the same notwithstanding constitutional or governmental changes, revolutionary or other.

LAUTERPACHT, supra at 92.

Just recently, this Court treated as settled fact the continuity of treaty provisions throughout a revolutionary takeover. Case Concerning U.S. Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 2. In doing so, it recognizes that the binding force of international law and treaty obligations remained uninterrupted during and after the internal upheavals in Meridion.

- B. The multilateral humanitarian treaties to which the Republic of Meridion became a party require a high presumption of continuity when one state succeeds another.

The succession of governments in Meridion is governed by an area of international law entirely separate from the law of state succession, which generally covers newly independent states as well as uniting and separation of territories.* Nevertheless, many of the principles of state

* See, Report of the International Law Commission on the work of its 26th Session, U.N. Doc. A/9610/Rev. 1, reprinted in (1974) 2 Y.B. Int'l L. Comm'n 157, 174 (hereinafter I.L.C. Report). The Commission, in a decision endorsed by the General Assembly, has expressly excluded succession of governments from the Vienna Convention on Succession of States in Respect of Treaties, adopted Aug. 23, 1978, U.N. Doc. A/CONF. 80/31.

succession regarding multilateral treaties are applicable to Meridion's situation.

Many multilateral treaties grow out of customary law, essentially as codifications of principles generally accepted by civilized peoples. Following their ratification, they are regarded as at least as controlling as customary law. Statute of the International Court of Justice, art. 38. See also, C.W. Jenks, State Succession in Respect of Law Making Treaties, 29 BRIT. J. INT'L L. 105, at 142 (1952). Humanitarian treaties, such as the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, done Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 284 (hereinafter, Geneva Convention (Civilian)), are usually civil in nature, benefitting the subjects of the State rather than the State itself, Jenks, supra at 111, and, like the International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976), and the International Covenant on Economic, Social, and Cultural Rights, adopted Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976), are said to have a "universal character." U.N. Doc. A/CN.4/L.215 and Corr. 2, reprinted in I.L.C. Report, supra p.2, at 172 n. 57. In this respect, the treaties are not personal to the government in power and so do not depend on its continued existence to be performable. The somewhat outdated "Clean Slate Doctrine," in which a new State begins its international life free of treaty obligations, is now being properly supplanted by the newer view of multilateral universal treaties -- a view preferred by the International Law Commission in its Draft Articles on the Succession of States in Respect of Treaties. I.L.C. Report, supra p.2, at 173 n. 57.

The Republic of Meridion demonstrated its concern for the welfare of its people and its respect for aliens in its territory by becoming a party to a number of humanitarian agreements (R.2). The rights afforded by

these instruments and the goals they sought to achieve did not depend on the continuity of the original government, and so they could not be brought to an end simply because this supervisory organ ceased to exist. International Status of Southwest Africa, 1950 I.C.J. 128, 133. The revolutionary government is as capable of performing these obligations as was the government it replaced. International stability as well as peaceful diplomatic, social and economic intercourse depend on States being able to rely on each other under the agreements into which they have entered. The force of humanitarian protections is weakened if Meridion, without expressly disaffirming particular obligations, can negate its agreement in the face of internal struggles.

C. The People's Democratic Republic is responsible for unlawful acts committed by the MLA before the new government came into power.

In addition to its responsibility for obligations assumed in Meridion's name before it came to power, the People's Democratic Republic of Meridion also assumed responsibility for acts of the MLA from the start of the revolution. 2 G. SCHWARZENBERGER, INTERNATIONAL LAW 709 (1968). The MLA was the organ by which the revolutionary government came to power, and not only did the government fail to exercise the many opportunities it had to disclaim the acts of the MLA, it expressly congratulated and thanked the MLA for its role in establishing the new government (R.5). The government also ratified the validity of MLA acts when it put on trial Septentrionese BIS personnel on charges of, among other things, violating Decree No. 181. This adds even greater weight to the general principle that a government established by successful revolution assumes liability for the acts of the revolutionaries. BORCHARD, supra p.1, at 241.

II. BY WANTONLY DISREGARDING THE STANDARDS OF HUMANITARIAN TREATMENT DUE BIS PERSONNEL, THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION HAS INCURRED LIABILITY TO SEPTENTRION

While the revolution in Meridion was a purely internal affair with

respect to the country's international personality and treaty obligations, this is not to say that the revolution was without international effect. The distinction is important in determining which treaties, provisions and international laws apply to the treatment of Septentrionese BIS personnel in Meridion.

- A. The international impact of Meridion's actions dictate that they be judged by international laws and agreements governing international conflicts.

Article 3 of each of the Geneva Conventions is specifically applicable to armed conflict "not of an international character," and so is the most pertinent of the Convention's clauses in cases of civil war. However, the Article itself states that its provisions are the minimum that the parties should observe, and that the parties should endeavor to bring all or part of the provisions of the entire Convention into effect by means of special agreements. Some commentators see the Convention as favoring general application of all articles that are relevant to the conflict. 2 O'CONNELL, supra p.1, at 973.

In the contemporary international community, the heavy interaction of states ensures that internal conflicts result in external effects to greater or lesser degrees. "So long as international law has not eliminated the possibility of civil wars, it is reasonable that it should regulate them" [with respect to the relations of the lawful government and insurgents with outside States]. LAUTERPACHT, supra p.2, at 246. It is the degree of external effect that determines the way in which international law will regulate: the greater the effect on other States, the more a State's sovereignty will be subordinated to the laws of international war. 2 SCHWARZENBERGER, supra p.4, at 673.

The revolution in Meridion had considerable international impact, most directly in its effect on perhaps hundreds of Septentrionese nationals

and their families. The scale of the struggle was also widespread, both in time and territory: ultimately it encompassed an entire nation in the course of struggle that lasted twelve years on a restricted basis and over a year in a final, escalated confrontation. It was a struggle for which international responsibility is recognized and in which violations of human rights engender universal concern. Finally, the aggression of the rebel forces, though directed primarily at the Republican government, was also systematically directed at Septentrionesse nationals in a way more than merely incidental to the revolutionary fighting. The revolutionaries regarded these people as representatives of what they misguidedly considered a hostile State.

These factors indicate that the revolution had great external impact. For the purposes of determining what violations occurred, this Court should apply all relevant provisions of the Geneva Convention (Civilian), and view the conflict in an international context.

B. Meridion breached its international obligation to protect human rights by illegally killing, incarcerating and torturing BIS personnel.

The injuries sustained by BIS personnel occurred in three separate situations during and after the revolution in Meridion. Having established that the present government is responsible for unlawful official acts in this period, it remains to be determined what violations of international obligations actually occurred and to what extent these injuries justify compensation to Septentrion.

The first situation in which BIS personnel of both Septentrionesse and Meridionesse nationality were killed and injured was during the MIA's takeover of BIS facilities during the advance on the capital (R.4). There is no evidence that BIS people offered resistance, participated in the defense of the capital or in any way engaged in aggressive activity, yet they

were killed and injured as members of a group identified with the incumbent government. These acts occurred in direct contravention of Article 3 of the Geneva Convention (Civilian).

The second set of injuries experienced by BIS personnel occurred when the MIA imprisoned a school director and three of his staff (R.4). The third occurred at the conclusion of the revolution when the People's Revolutionary Court convicted senior Septentrionese BIS officials of various charges (R.7). In both these cases there was a glaring lack of evidence sufficient to warrant arrest and detention. The director's confession (to the effect that he had hidden local officials during hostilities) was exacted under torture, and so not only may its validity be seriously questioned, but the method by which it was obtained is an abhorrent violation of the laws of civilized nations,* and of the human rights protections which the government of Meridion had guaranteed. Geneva Convention (Civilian), arts. 3(a) and 31. International Covenant on Civil and Political Rights, art. 7. The charges against BIS officials on September 30, 1977 were similarly based on unsupported allegation and rumor. The overall impression gleaned from the evidence is that the actions against these persons were inspired, not by a desire for justice, but by enmity for the Septentrionese government and a discriminatory hatred of the Septentrionese peoples: insufficient grounds for arrest and conviction. See, Boffolo case (Italian-Venezuelan Mixed Claims Commission), 10 R. Int'l Arb. Awards 528 (1903). See also, Geneva Convention (Civilian), art. 3 and International Covenant on Civil and Political Rights, art. 2.

* The revulsion of the international community to acts of torture is reflected in G.A. Res. 3059 (XXVIII), U.N. Doc. A/9249 (1973), and in G.A. Res. 32/62 (1977) authorizing the drafting of a convention against torture and other cruel, inhuman or degrading treatment or punishment.

While Septentrion believes that insufficient grounds existed for the arrest of BIS people, it makes no judgment as to the guilt or innocence of BIS persons for the crimes charged. Rather it is the procedure and treatment of the prisoners which Septentrion protests. If Meridion did have grounds for the arrest of these people, they were entitled to judicial treatment equal to that of the Meridionese people before the courts, or if this too fell below internationally recognized criteria of due process, then at least to an accepted international minimum standard of justice. Address of Hon. E. Root, 4 AM. SOC'Y INT'L L. (PROC.) 16, 20-22 (1910). Treatment of BIS personnel fell below this standard when they were denied the benefits of due process of law by the misconduct or inaction of Meridion's judicial branch. BORCHARD, supra p.1, at 330. See also, 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW 526 (1927). Specifically, under the Geneva Convention and the International Covenants, the BIS prisoners were entitled to be represented by counsel of their choice, to be fully apprised of the evidence against them (including having the opportunity to cross-examine witnesses) and to testify on their own behalf. These rights are fundamental to enlightened concepts of due process, see, B.E. Chattin (U.S.A.) v. United Mexican States, 4 R. Int'l Arb. Awards 282 (1927), and were repeatedly denied to the prisoners.

These acts were not the unauthorized acts of agents of Meridion -- which would in any event not absolve the government for liability, Case of William Way (U.S. v. Mex.), reprinted in W. BISHOP, JR., INTERNATIONAL LAW 646 (2d ed. 1962) -- nor were they acts within the discretion of the agents and acquiesced to by Meridion. Rather, these acts reflected the active will of the state itself, carried out by its newly established judicial system, reflecting the motives of the government and for the purpose of seeking retribution against a State it sees as hostile to its interests. The inhumane and discriminatory treatment which Septentrionese personnel have suffered is

an injury to Septentrion, and creates international responsibility on the part of Meridion. Draft Articles on State Responsibility, art. 1, reprinted in Report of the International Law Commission on the work of its 32nd Session, U.N. Doc. A/35/10, 2 Y.B. Int'l L. Comm'n 26, 33 (1980).

C. The People's Democratic Republic must make reparation to the Kingdom of Septentrion for the injuries suffered by BIS personnel.

1. This action is properly brought by the Kingdom of Septentrion on behalf of all BIS personnel injured by the revolutionary government in Meridion.

More than two hundred years ago, Vattel eloquently summarized a well-established precept of international relations when he said, "whoever uses a citizen ill, indirectly offends the State" VATTEL, LAW OF NATIONS 161 (J. Chitty ed. 1858). Septentrion is actually asserting its own rights when it comes before this international tribunal espousing the claim of its subjects. *Mavrommatis Palestine Concessions (Jurisdiction)*, P.C.I.J. ser. A, No. 2 (1924). The mere fact that they were injured while resident in Meridion does not weaken the ties between the Septentrionese citizens and their homeland. Besides the fact of their nationality, these people were in Meridion only as employees of an organization incorporated in Septentrion. They continued to speak their native language and practice Septentrion's religion (R. 3). Clearly, they at all times maintained with their homeland the "genuine links" that this court requires when a State espouses its citizen's claims. *Nottebohm Case (Lichtenstein v. Guat.)* 1955 I.C.J. 4.

- a. Septentrion's position in a family of nations concerned with human rights gives it standing to request a declaration on behalf of Meridionese BIS personnel.

Septentrion also submits that these events warrant a declaration by the Court that Meridion's treatment of its own citizens during the takeover of BIS facilities violated international law. Bringing a claim on be-

half of a national is usually within the sole prerogative of that national's State. This Court however, in its decision to allow the United Nations to bring a claim on behalf of one of its agents, expressly recognized that there are important exceptions to this rule. Reparations for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174, 181-2. In order to accord Meridionese BIS personnel safe and fair treatment, Septentrion suggests that this Court recognize the State's humanitarian intervention as a valid exception to the aforementioned rule.

Septentrion's intervention on behalf of the Meridionese victims is warranted on grounds of humanity and its position in the family of nations concerned with violations of human rights. BORCHARD, supra p.1, at 14. It is appropriate that Septentrion assert this claim on behalf of the injured Meridionese: they were injured during (and possibly because of) their employment by a Septentrionese organization, and prior to 1964, they were citizens of the Kingdom of Septentrion. To disallow Septentrion's claim would be to leave these Meridionese nationals without protection before their own hostile State.

- b. The action on behalf of BIS personnel is timely brought before this Court, as local remedies have either been exhausted or do not afford opportunity for a just hearing.

The Septentrionese BIS officials now serving sentences in Meridion received the "benefit" of the only Meridionese tribunal open to them: a trial court serving as a puppet of the revolutionary government. Their appointed counsel, in a move that seems more sympathetic to the prosecuting government than to the defendants they represented, conveniently allowed the deadlines for filing appeals to pass (R. 8). Thus, any local remedies which might have been available to them were exhausted, and so their claims are properly brought before this Court. 5 HACKWORTH, supra p.8, at 511.

The claims of other BIS personnel, killed or injured by the revo-

lutionary forces, may be exempted from the prerequisite that local remedies be exhausted. Id. It is clear from the procedures accorded the BIS officials at the trial on September 30, 1977, that the People's Revolutionary Court is not an independent judicial organ in Meridion. Rather, it is actually controlled by the political party now in power, which uses the Court to impose its own arbitrary and unjust vengeance on those it views as hostile to its cause. In light of the treatment given the one group of claimants, the other claimants can expect that justice for them in Meridion's courts will also be non-existent. Therefore, their claims may be directly submitted to this tribunal. Id.

2. Septentrion is entitled to an award of damages for injuries sustained by Septentrionese BIS personnel, and immediate repatriation of those now held prisoner in Meridion.

International law requires that the People's Democratic Republic make reparation for the unlawful acts it and the revolutionary army have committed against the Septentrionese people. Chorzow Factory Case (Jurisdiction), P.C.I.J. ser. A, No. 9, at 21. Fisheries Jurisdiction Case (W. Ger. v. Ice.), Separate Opinion of Judge Sir Humphrey Walcock, 1974 I.C.J. 233. This Court has full authority to determine not only the amount of damages but the method by which the amount may be paid. Chorzow Factor Case (Merits) P.C.I.J. ser. A, No. 17, at 61-62.

Septentrion's primary concern regarding Septentrionese BIS personnel now held prisoner in labor camps is that they be immediately repatriated. The age of many of these prisoners and the treatment to which they are continually subjected indicate that their health and lives are jeopardized every day they remain imprisoned. Furthermore, only in this way, can these people be given a fair hearing before an impartial tribunal to inquire into any charges against them by the Meridionese government.

Septentrion is also entitled to an award of damages for the injuries the prisoners have suffered. The award of damages is based on two major

factors. First are the damages to the prisoners themselves, including loss of earning capacity, pain and suffering, and damages for unwarranted arrest and imprisonment. See gen., 1 M. WHITEMAN, DAMAGES IN INTERNATIONAL LAW 307-49 (1937). Second, Septentrion itself is entitled to a monetary award for the affront it has suffered -- an amount in direct proportion to the gravity of Meridion's wrongful conduct. Id., at 411. Septentrion requests that the Court consider, in determining the amount, that future medical and related expenses are virtually certain in light of the circumstances, but are indeterminate until these people are returned to Septentrion's soil. An allowance should be made now for such expenses, since once reparation is made, this claim must be deemed settled. Chorzow Factory Case (Merits), supra p.11, at 47.

The wrongful deaths of Septentrionese people at the hands of the revolutionary government and the MLA also demand reparation. Of the several methods available for determining the amount of damages due, the most widely accepted is the loss suffered by the survivors. 5 HACKWORTH, supra p.8, at 747. The limited number of deaths involved makes the task of such a determination reasonable.

III. THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION VIOLATED ITS INTERNATIONAL OBLIGATIONS BY CAUSING THE MASS MIGRATION OF ITS PEOPLE FROM MERIDION, RESULTING IN ECONOMIC INJURY TO SEPTENTRION

The flight of at least 45,000 Meridionese citizens can be directly linked to the movement of the MLA from the Southeast Province. Whether the decision to leave Meridion was based on the fear of economic or political reprisals, the brutality of massacres reported in the Fall of 1976 or disdain for the rebels' ad-hoc government, the refugees' desertion of their homeland was necessitated by the rebels' invasion of the Meridionese Capital. Septentrion provided temporary housing, food and medical facilities for these unfortunate people.

- A. The People's Democratic Republic of Meridion is responsible for the conditions which caused the massive displacement of its citizens.

Only Septentrion has the authority to admit aliens into its territory and such authority emanates from the "normal exercise of territorial sovereignty." Asylum Case, 1950 I.C.J. 266 The People's Democratic Republic was under a duty to respect Septentrion's sovereignty — an obligation so extensive that it requires Meridion to prevent its subjects from committing acts violative of Septentrion's territorial supremacy. Oppenheim's International Law (8th ed. by Lauterpacht, 1955) at 288. These sovereign rights support the proposition that Meridion is under an obligation not to cause the transmigration of its citizens. Thus, Meridion must be held legally responsible for acts committed by its nationals which caused the mass migration from its territory injuring Septentrion. C. Eagleton, The Responsibility of States in International Law (1928) at 79-80. The Trail Smelter Arbitration Award recognized the principle that emanations from within one State's territory (in that case air pollution) injuring another State's territorial integrity is a breach of established international law. Trail Smelter Arbitration (U.S. v. Canada) 3 R. Int'l Arb. Awards 1905 (1949). Similarly, Meridion must be held accountable for conduct which precipitated the mass exodus and prevents the returning of its citizens.

According to Borchard, the failure to perform this primary duty creates a secondary duty, which includes making reparations where necessary. Borchard, The Law of Responsibility of States for Damage Done in Their Territory to the Person or Property of Foreigner, 23 Am. J. Int'l L. (Spec. Supp. 1919) 131, 188. For example, as a result of international pressure, Vietnam has agreed to curb the flow of refugees from its territory. L.A. Times, July 25, 1979, at 1, col. 1. Furthermore, it was stated at an ASEAN foreign ministers meeting that the party responsible for mass migrations has a deci-

sive role to play in resolving the problem at its source. Wain, *The Indochina Refugee Crisis*, 58 FOREIGN AFF. 160, 168 (1979) Thus, an important aspect of the foreign ministers meeting was not the type of reparation sought but rather, the recognition that the country of origin must play a major role in resolving the problem.

- B. This Court should extend accepted principles of International Reparations by requiring Meridion to bear the financial burden of sustaining their citizen's until their status has been determined.

A report of the Committee of International Assistance to Refugees noted, "(i)n view of the heavy burden placed on the countries of refuge, the Committee considers it an international duty for the countries of origin of the refugees at least to alleviate to some extent, the burdens imposed by the presence of refugees in the territory of other states." Report of the Committee of International Assistance to Refugees League of Nations Doc. C.2, M.2, 1936, XII. Furthermore, having earlier established the broad principle that Meridion's unlawful acts require it to make reparation to Septentrion for injuries suffered, (*Chorzow Factory Case (Merits)*, supra p.11, at 61-62) it is submitted that this Court should expressly include in these reparations at least the expense of housing and feeding the Meridionese nationals until their status has been determined. *Oppenheim's International Law*, supra p.13, at 353.

Compensation to nations receiving refugees is not unique, although it has usually taken the form of independent, third party assistance. Contributions made or pledged by various countries and independent organizations during the quarter ending in March 1980 amounted to 256.9 million dollars. Report of the United Nations High Commissioner for Refugees, 35 U.N. GAOR Supp. (No. 12) at 74-75, U.N. A/35/12 (1980). However, the People's Democratic Republic cannot expect independent organizations to shoulder the burden of a

problem it fostered. Furthermore, as illustrated in the cases of Thailand and Malaysia, the financial and administrative burden imposed by the refugees is only partly lightened by international assistance. Wain, supra p.14, at 168. The UNRWA reported that the threat which hangs over its organization today is that inadequate income to maintain its services to the refugee community will cause it to collapse. Report of the Commissioner General of the U.N. Relief and Works Agency for Palestine Refugees in the Near East. 1 July 1979-30 June, 1980, 35 U.N. GAOR Supp. (No. 13) at 2, U.N. Doc. A/35/13 (1980). We urge that it is more equitable and legally sound for this court to mandate an program somewhat akin to the agreement reached between the UNHCR and the Federal Republic of Germany. In that case, the Federal Republic of Germany reimbursed the UNHCR for payments to refugees who has suffered persecution under the national-socialist regime. Report of the United Nations High Commissioner for Refugees, 25 U.N. GAOR Supp. (No. 12) at 12, U.N. Doc. A/8012.

- C. The Protocol relating to the status of refugees requires that Septentrion not return to the People's Democratic Republic any citizens who fear persecution. Therefore, compensation should include all costs incurred by the refugees in Septentrion pending determination of their status and/or until resettlement can be secured here or elsewhere.

Article 33, para. 1 of the Protocol states that "no contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267.

The Protocol fails to delineate specific procedures for determining refugee status but does require that those accorded refugee status must have a well-founded fear of persecution and that Septentrion determine their status

reasonably. Revolutionary Order No. 1, which declares in Paragraph 5 "under a regime of martial law every enemy of the Revolution will be eliminated" and in Paragraph 6 that "all counter-revolutionary elements fleeing from the shores of our nation are hereby declared enemies of the People and may be stripped of its citizenship" indicates that these individuals have a legitimate fear of persecution should they be returned to the Peoples' Democratic Republic. The language of the order which uses the words "elimination" and "stripping of citizenship" viewed in conjunction with the actions of the government gives rise to a legitimate fear of reprisals. This fear is reinforced by looking at the treatment accorded the BIS prisoners by the revolutionary government. Furthermore, events occurring within their homeland subsequent to their departure which upon their return would lead to a well founded fear of persecution, demand that the individual is classified as a refugee. Fragonal, *The Refugee: A Problem of Definition*, 3-4 CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW 55 (1970-72). See also, Grahl-Madsen, *THE STATUS OF REFUGEES IN INTERNATIONAL LAW* (1966) Vol.1 at 179.

The Preamble to both International Covenants recognizes the Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810 at 71 (1948), and so the Meridionese Government, as a party to these covenants, has created the standards for determining the freedoms and rights its citizens should expect to enjoy. By denying the rights embodied in the Declaration, particularly the right of its citizens to a nationality, Id., art. 15, and an adequate standard of living, Id., art. 25, the government has violated Article 30 of the Declaration. Id., art. 30.

Although the Protocol does not specifically address the Third category of citizens (i.e., economic refugees) it is reasonable to surmise that should a person's economic plight become severe enough, he too should be granted refugee status. Grahl-Madsen notes that, "(i)t is generally agreed in

Convention countries alike that if a man's life, limb or physical freedom is threatened . . . , he has a valid claim to refugeehood or if he will be denied every possibility for earning a livelihood he too has a valid claim to refugeehood." Grahl-Madsen, supra p.16, at 86. Several Federal Court cases in the United States gives credence to this interpretation. See Dunat v. Harvey, 297 F.2d 744, 746 (3d Cir. 1961), Diminich v. Esperdy, 299 F.2d 244, 246 (2d Cir. 1961), Soric v. Flagg, 303 F.2d 289, 290 (7th Cir. 1962). This seems to enlarge the more traditional notion of what a refugee is and thus, may include those persons who are deprived economically.

The Protocol relates to our claim for compensation for two reasons. One, the likelihood that many of the Meridionese citizens are refugees compels Septentrion to expend the time and money to care for and process these individuals and two, funds should be set aside now to compensate Septentrion for the costs of resettling those persons found to be in fact refugees.

D. Compensation will deter the People's Democratic Republic from committing acts which will result in continued mass migrations.

It is not surprising that another wave of refugees commenced their exodus during the MLA's final, bloody move on the capital. Viewed within a historical and contemporary framework, Septentrion has legitimate reason to fear that continued migrations may occur if unchecked.* Compensation given to the injured government will have the dual effect of making Septentrion whole and serve as a reminder to the People's Democratic Republic that mass refugee flights cannot be condoned with impunity.

* A recent article states that the refugee problem in Vietnam may increase several hundred thousand and approach one million if unchecked. Wain, supra p.14, at 176. In 1980, the year of the sudden influx of Carribean "boat people", the number of Haitians caught trying to enter the U.S. illegally shot up to 15,093, compared with only 2,522 the year before. REFUGEES OR PRISONERS, NEWSWEEK, Feb. 1, 1982 at 28.

E. Denationalization cannot be used by the People's Democratic Republic to evade its international obligation, including its duty to make reparations to Septentrion.

Following the exodus of the Meridionese people, the Government issued Revolutionary Order No. 1 which stated that it could revoke their citizenship. Although Meridion has the right to determine the criteria required for its citizenship, it cannot by its own unilateral act free itself of international responsibilities. Mr. Brownlie asserts that "States cannot plead provisions of internal law in justification of international wrongs, and they are responsible for conditions on their territory which lead to the infliction of harm on other states." Brownlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (2d ed. 1973) at 383. It is not illegal per se under international law for a government to follow a policy of denationalization. However, it may become illegal if it is used as a means of evading a duty that otherwise exists under international law.

The People's Democratic Republic proclamation is vague and ambiguous. It implies that all those that have fled their shores are counter-revolutionaries. No proof has been presented to substantiate this charge and it appears that the vast majority are not counter revolutionaries but rather, refugees who fled their homeland fearing for their personal safety and well-being. Moreover, notices of revocation of their citizenship had been issued against refugees who had not been ordered to appear at police stations in the People's Democratic Republic to give account of whether or not they had engaged in counter-revolutionary acts.

A League Committee noted, "(i)t was doubtless one of the sovereign rights of states to withdraw the nationality of their nationals in specific cases. But there was in everything the right and the abuse of the right." Report of the Committee of International Assistance to Refugees, League of Nations Doc. C.72, 1936, XII. The People's Democratic Republic must not

be allowed to evade its duty of compensation by the simple process of denationalization.

IV. SEPTENTRION'S ACTIONS IN DETAINING MERIDIONESE CITIZENS AND DECLINING TO RESETTLE DETAINEES IN SEPTENTRION WAS CONSISTENT WITH PRINCIPLES OF INTERNATIONAL LAW

- A. The placement of 40,000 Meridionese citizens in temporary resettlement camps pending determination of their status was in accordance with the provisions of the Protocol and the Declaration of Human Rights.

Almost 40,000 citizens of the People's Democratic Republic of Meridion arrived simultaneously in the country of Septentrion. The mass migration presented Septentrion with the enormous task of trying to house, feed and process these people. All detainees were afforded adequate food and medical facilities. The housing provided, though less than ideal, was the best that any nation could be expected to provide under such sudden and overwhelming circumstances.

Article 9 of the Protocol allows contracting states under exceptional circumstances to take those measures which it considers to be essential pending a determination by the contracting states that a person is in fact a refugee. PROTOCOL RELATING TO THE STATUS OF REFUGEES, supra p. 15, Article 9. Also, Article 31 regarding refugees unlawfully in the country of refugee allows the contracting state to apply necessary restrictions upon the refugees movements until their status in the country is regularized or they obtain admission into another country. Id. at Article 31(2).* Septentrion's detention of Meridionese nationals is lawful as long as it is necessary and not applied arbitrarily. Universal Declaration of Human Rights, at Article 9. The large numbers involved, the possible backlash of our citizens against these refugees in light of the Meridion's treatment of BIS personnel, and the interior minister's reasonable

* Occasion for Art. 31(2) restrictions may be deemed necessary in the case of a mass influx of refugees. Grahl-Madsen, supra p. 16, Vol.II, at 419.

fear that some may be troublemakers,* justifies placement of these people in temporary camps. Those with relatives in Septentrion or with special skills were allowed to leave the camps because they did not pose any danger to our government or themselves.

B. The unavailability of judicial remedies to those in temporary resettlement camps does not amount to a denial of justice.

Professor Borchard writes that ". . . a Denial of Justice exists when there is denial, unwarranted delay [emphasis added] or obstruction of access to courts, gross deficiencies in the administration of judicial or remedial process. . . ." Borchard, supra p.13, at 173. Septentrion agrees that lawfully admitted aliens or regularized refugees must be given access to Septentrion's legal system. Septentrion's immigration law narrowly limits the unavailability of judicial remedies to those in temporary camps.

Septentrion supports the spirit of the International Covenant on Civil and Political Rights but as only a signatory to the covenant it is not obligated to abide by the judicial mechanisms the covenant has established.** Moreover, Article 4 of the Covenant states that ". . . the Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situations. . . ." The International Covenant on Civil and Political Rights, supra p.3, art.4, para.1.

* The U.S. Supreme Court recognized the legitimacy in detaining those who may pose a security risk or are likely to abscond. Leng May Ma v. Barber, 357 U.S. 185, 190 (1958).

** Article 14 of the Vienna Convention states that the consent of a state to be bound by a treaty is expressed by ratification when the treaty provides for such consent to be expressed by means of ratification. Vienna Convention on the Law of Treaties, U.N. Doc. A/conf. 39/27 (1969) Article 48, para. 2 of the International Covenant on Civil and Political Rights requires ratification for the covenant to become binding. International Covenant on Civil and Political Rights's, supra p.3, art.48, para.2.

Septentrion will not deny these individuals their opportunity to be heard in court. Rather, Septentrion is warranted in delaying their access to legal services while Septentrion completes their processing in an orderly manner. Septentrion contends that most of these individuals desire a judicial or administrative hearing for regularization purposes. It is more sensible and expeditious to allow a government agency, trained and knowledgeable in refugee problems, to first handle the details of a processing program.

C. Septentrion is not under a duty to resettle the refugees permanently or provisionally in its society.

The Universal Declaration of Human Rights gives refugees the right to seek and enjoy asylum. The Universal Declaration of Human Rights, at Article 14, para. 1. This means the right of every state to offer refuge and to resist demands for extradition. Pugash, Dilemma of the Sea Refugee: Rescue Without Refugee, 18 HARVARD INT'L L.J. 577, 586 (1977). However, neither customary international law nor any convention guarantees a right to asylum. As a party to the Refugee Protocol, Septentrion must only give an unlawful refugee a reasonable amount of time to find admission elsewhere and must not return him to any territory where he would be persecuted. Grahl-Madsen states, "the notion of 'provisional asylum' and the principle that states should cooperate to lighten the burdens of a country of first asylum which have found expression in the Preamble of the Refugee Convention and in Articles 2(2) and (3) of the Declaration on Territorial Asylum of 14 Dec. 67, indicate that by admitting a refugee to its territory a state has not guaranteed that he will find a permanent abode there." Grahl-Madsen, supra p.16, at 436. (emphasis added).

It would be irrational to expect Septentrion to provisionally grant asylum while thousands await processing. Notwithstanding the possibility that many would not return for their hearing, Newsweek, supra p.17, at 28, the

Meridionese have a different language, religion and culture. They come from a developing country while Septentrion is an industrial one. Except for the few with special skills or relatives in Septentrion, it would be irresponsible for Septentrion to provisionally grant asylum until their status is determined or until resettlement is found elsewhere.

D. The Protocol does not apply to the returning of Refugees still on the high seas.

The principle of non-refoulement as defined by the Protocol is not violated by returning a boat still on the high seas. Article 31 of the Protocol uses the word "illegal entry or presence" and Article 33 refers to "return a refugee" as though the person is already in the territory to signify when the Protocol is to be made applicable". PROTOCOL RELATING TO THE STATUS OF REFUGEES, supra p.15, at Art. 31(1) and Art. 33(1).

The Protocol and the Report of the Ad-Hoc Committee of the Economic Aid Social Council that produced it are silent on what constitutes "presence" for the purposes of the Convention or Protocol. Grahl-Madsen presents the simplest definition of legal presence which is one that coincides with a party's physical presence in a territory. Grahl-Madsen, supra p.16, Vol.II at 223-24. Other commentators reiterate this definition using different language or applying a specific context. For example, a refugee would be in a country when he stepped ashore, Pugash, supra p. 21, at 593, penetrated into the territory, Nayar, Asylum in International Law, 17 St. Louis University Law Journal 17, 29 (1972-73) or when governments receive refugees within their territories, Nayar, Id. at 31, or became situated in the territory of the contracting state. Frank, EFFECT OF THE 1967 U.N. PROTOCOL ON THE STATUS OF REFUGEES, 11 Int'l Lawyer 291.

The Septentrionese Coastal Service intercepted the vessel of the 5,000 persons still on the high seas, and took aboard the 20 percent not

strong enough to continue their journey. Septentrion did not return the Meridionese people into the hands of revolutionary government but only escorted them back to familiar waters. Septentrion's refusal to accept the remaining 4,000 was necessitated by the large numbers already being cared for in Septentrion. The International Commission of Jurists went even further and stated that the principle of "non-refoulement" may even be violated "for overriding reasons of national security or to safeguard the population as in the case of mass influx." International Commission of Jurists, The Application in Latin America of International Declarations and Conventions Relating to Asylum (1975) at 59.

E. Septentrion's interception of the vessel carrying Meridionese citizens was consistent with the High Seas convention and International Law.

The case of Naim Molvan, Owner of Motor Vessel "Asya" v. Attorney General for Palestine is analogous to our case. Naim Molvan, Owner of Motor Vessel "Asya" and Attorney General for Palestine. 1948 A.C. 351. The British authorities were to regulate the immigration of Jews into Palestine but were to ensure that the rights and position of other sections of the population were not prejudiced. The Asya was sighted by a British vessel on the high seas flying no flag and soon thereafter was forced by the British navy into its territorial waters. The Judicial Committee of the Privy Council raised the issue of the freedom of the seas but doubted whether, "the Asya was entitled, whatever her mission might be, to sail the open sea off the Coast of Palestine. Their warships cannot assent to the proposition that any such right, unqualified by place or circumstances is established by International Law." Id. at 369. The United States Supreme Court in Church v. Hubbart held that the authority of a nation to protect itself from injury extended beyond the limits of its territory and that it had the right to use the means necessary for its prevention. Church v. Hubbart, 2 Cranch 187 (1804). Septentrion

safely escorted the refugee vessel to the Meridionese waterline. Septentrion had every reason to believe that these people were headed for its country and was justified in preventing the vessel from proceeding to its coastline.

The Privy Council in the aforementioned case stated. "No question of comity nor any breach of international law can arise if there is no state under whose flag the vessel sails." Naim Molvan, Owner of Motion Vessel "Asya" and Attorney General for Palestine, supra p.23, at 370. This view is found in Professor Oppenheim's treatment of international law, Oppenheim's International Law, supra p.13, at 595) and is confirmed by Article 6(1) of the Geneva Convention of the High Seas. Convention of the High Seas of 1958, Art. 6, Apr. 29, 1958 12 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82.

The Meridionese boat people cannot claim to sail under the flag of Meridion. A genuine link between the State and the ship is lacking, witnessed by the State's inability to control various administrative, technical and social matters and the failure of the boat people to receive documents designating that it is entitled to fly Meridion's flag. Convention of the High Seas of 1958, supra, at Art.5(1).

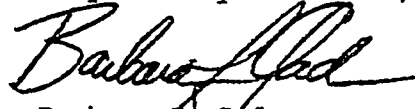
In its takeover of the former government and in its administration of the present government, the People's Democratic Republic of Meridion has demonstrated a brazen disregard for the human rights of its nationals and of aliens lawfully within its territory. Its actions demand not only the condemnation of civilized nations but that economically injured Septentrion be compensated as well.

CONCLUSION

In view of the above, the Kingdom of Septentrion respectfully asks that the Court declare that the treatment accorded BIS personnel, of both Septentrionese and Meridionese citizenship, by the People's Democratic Republic

of Meridion and the revolutionary army that brought it to power, violated international law. The Court is also asked to adjudge that Meridion further violated international law by causing the mass migration of its people to Septentrion, and that Septentrion's actions with respect to these people were consistent with international law. In addition, Septentrion requests that the Court order the immediate repatriation of all BIS prisoners and award compensatory damages to Septentrion for the injuries suffered by BIS personnel and their families and for the costs of housing and feeding Meridionese detainees in Septentrion.

Respectfully submitted,



Barbara J. Gaden



Steven P. Vincent