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IN THE  
INTERNATIONAL COURT OF JUSTICE

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MARCH 1982

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KINGDOM OF SEPTENTRION,

Applicant,

v.

PEOPLE'S DEMOCRATIC REPUBLIC  
OF MERIDION,

Respondent.

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MEMORIAL FOR RESPONDENT

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TREATIES AND OTHER INTERNATIONAL AGREEMENTS

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Convention on the Prevention and Punishment of the Crime  
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Convention on the Reduction of Statelessness, G.A. Res.  
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Geneva Convention for the Amelioration of the Condition  
of Wounded, Sick, and Shipwrecked Members of Armed  
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T.I.A.S. No. 3363, 75 U.N.T.S. 85 . . . . . 5

Geneva Convention for the Amelioration of the Wounded and  
Sick in Armed Forces in the Field, Done Aug. 12, 1949,  
6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31. . . . . 5

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. . . . . 5,6,9

Geneva Convention Relative to the Treatment of Prisoners  
of War, Done Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S.  
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I.C.J. Statute. . . . .21

International Covenant on Civil and Political Rights, G.A.  
Res. 2200A, U.N. GAOR Supp. (No. 16) at 52, U.N. Doc.  
A/6316 (1966) . . . . . 1,7,10,20

International Covenant on Economic, Social, and Cultural  
Rights, G.A. Res. 2200A, U.N. GAOR Supp. (No. 16) at 49,  
U.N. Doc. A/6316 (1966) . . . . . 1

Principles Concerning Friendly Relations and Cooperation  
among States, G.A. Res. 2625, U.N. GAOR Supp. (No. 28)  
at 121, U.N. Doc. A/8082 (1970) . . . . . 9

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 . . . . . 18,19,22,23

U.N. CHARTER. . . . . 1

Universal Declaration of Human Rights, G.A. Res. 217,  
U.N. Doc. A/810 at 71 (1948). . . . .1,15,17,21

CASES

British Claims in Spanish Morocco (Spain v. U.K.) 2 R. Int'l Arb. Awards 615 (1924) . . . . .	13
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The Costa Rica Packet (G.B. v. The Netherlands) Moore, I.A. 4948 (1897). . . . .	22
Guardianship of Infants 1958 I.C.J. 120 . . . . .	21
The Lotus, 2 Dods 210 (1917 . . . . .	21
MacAndrews and Forbes Co., (U.S. v. Turkey) Nielsen's Opinions and Report 87 (1937) . . . . .	16
Walter A. Noyes (U.S. v. Pan.) United States and Panamanian General Claims Arbitration 216, 6 R. Int'l Arb. Awards 307 (1933). . . . .	17
Reparation for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174 . . . . .	16
Temple of Preah Vihear 1962 I.C.J. 4. . . . .	17
Trail Smelter Arbitration, 3 R. Int'l Arb. Awards 1905 (1949). . . . .	14,15

TREATISES, DIGESTS, AND RESTATEMENTS

A. BARKER, PRISONERS OF WAR (1975). . . . .	3
A. BOKOR-SZEGO, NEW STATES AND INTERNATIONAL LAW (1970) . . . . .	4
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2 E. BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD (1915) . . . . .	11
V. BRIGGS, MEXICO MIGRATION AND THE U.S. LABOR MARKET (1975). . . . .	13
I. BROWNLIE, BASIC DOCUMENTS IN INTERNATIONAL LAW (2d ed. 1972) . . . . .	21
I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (3d ed. 1973) . . . . .	17
C. COLOMBOS, INTERNATIONAL LAW OF THE SEA (5th ed. 1962) . . . . .	22

E. Jimenez de Arechega, <u>International Responsibility</u> , in <u>MANUAL OF PUBLIC INTERNATIONAL LAW</u> (M. Sorensen ed. 1968) . . . . .	.12,13
2 GRAHL-MADSEN, <u>THE STATUS OF REFUGEES IN INTER-</u> <u>NATIONAL LAW</u> (1972) . . . . .	19
R. MILLER, <u>THE LAW OF WAR</u> (1975). . . . .	.3
D. O'CONNELL, <u>Independence and Problems of State Succession</u> , in <u>UDOKANG, THE NEW NATIONS IN INTERNATIONAL LAW AND</u> <u>DIPLOMACY</u> 7 (1965). . . . .	.4
2 D. O'CONNELL <u>INTERNATIONAL LAW</u> (2d ed. 1970). . . . .	22
S. ODA, <u>The Individual in International Law</u> , in <u>MANUAL OF</u> <u>PUBLIC INTERNATIONAL LAW</u> (M. Sorensen ed. 1968) . . . . .	18
1 L. OPPENHEIM <u>INTERNATIONAL LAW</u> (8th ed. H. Lauterpacht ed. 1955) . . . . .	10
2 L. OPPENHEIM <u>INTERNATIONAL LAW</u> (7th ed. H. Lauterpacht ed. 1952) . . . . .	.3
A. ROTH, <u>MINIMUM STANDARD OF INTERNATIONAL LAW APPLIED</u> <u>TO ALIENS</u> (1949). . . . .	20
8 M. WHITEMAN, <u>DIGEST ON INTERNATIONAL LAW</u> (1965) . . . . .	.4

JOURNALS

Bond, <u>Proposed Revisions in the Law of War applicable to</u> <u>International Conflicts</u> , 12 <u>Santa Clara Law</u> 223 (1972). . . . .	.5
La Forest, <u>Toward a Reformulation of the Law of State</u> <u>Succession</u> , <u>PROCEEDINGS, A.S.I.L.</u> 103 (Apr. 1966) . . . . .	.4
Lester, <u>State Succession to Treaties in the Commonwealth</u> , 12 <u>INT'L &amp; COMP. L.Q.</u> 488 (1963). . . . .	.4
Robertson, <u>The U.N. Covenant on Civil and Political Rights</u> <u>and the European Convention on Human Rights</u> , 43 <u>BRIT.</u> <u>Y.B. INT'L L.</u> 26 (1968) . . . . .	10
Smith, <u>The Refugee Crisis: Solving the Problems</u> , 67 <u>A.B.A. J.</u> 1464 (Nov. 1981) . . . . .	12
Wain, <u>The Indochina Refugee Crisis</u> , 58 <u>FOREIGN</u> <u>AFF. B.</u> 160 (1979). . . . .	12

MISCELLANEOUS PAPERS AND DOCUMENTS

Comments of the Committee on the Draft Convention Relating  
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Item 32) 61, U.N. Doc. E/1618/AC.32/5 (1950). . . . . 23

Comments on Restriction of Movement and Convention Relating  
to the Status of Refugees, U.N. Doc. A/CONF.2/SR. at 14 . . . . . 19

General Assembly on the Question of State Succession,  
G.A. Res. 1765 (XVII) (1962). . . . . 4

Recognition of Legitimacy of Struggle for Self-Determination,  
G.A. Res. 2908, U.N. GAOR Supp. (No. 30) at 2, U.N. Doc.  
A/8730 (1972) . . . . . 1

## 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 FACTS

For many years New Hibernia was subject to colonial domination by the Kingdom of Septentrion. Although Septentrion technically granted independence to Meridion (formerly New Hibernia), the newly established government realigned itself with its former colonial oppressor by joining the Septentrionese Confederation of States, and affirmed all treaty obligations made on its behalf by Septentrion.

Eventually Meridion became a party to several treaties including the Geneva Conventions of 1949, the International Covenants on Civil and Political Rights, the International Covenant on 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 but has not ratified the Human Rights Covenants. Septentrion and Meridion are both members of the United Nations.

Immediate uprisings began against the newly established government of Meridion. The government responded by suspending all civil liberties in the nation. Eventually the isolated efforts of the Meridionese people at self-determination culminated in an organized liberation movement known as the Meridionese Liberation Army (hereinafter referred to as the MLA).

By 1976, the MLA was successful in controlling the Southeast Province of Meridion and began to issue orders concerning village administration. One such order was specifically directed to the Benefactors International Society, Ltd., (hereinafter referred to as BIS). BIS, incorporated under the laws of Septentrion, built and operated vital institutions in Meridion. These institutions were constructed when Meridion was still a colony of the Kingdom of Septentrion. Following independence from Septentrion, all Septentrionese BIS employees and volunteers who remained in Meridion were issued special residency permits. These permits allowed Septentrionese BIS personnel to remain in

Meridion on the express condition that they refrain from all activity of a political nature. All BIS personnel received notice that imprisonment would result from violation of their residency permit.

BIS facilities, namely schools, cultural centers, and hospitals, affected the social, cultural, and political development of the Meridionese people; however, Meridionese citizens did not occupy important positions at these institutions. BIS' stated goal is to "bring the gift of civilization to the world's backward people".

The MLA, disturbed by activities conducted at BIS facilities, issued Decree 181. Although this decree basically ordered BIS to refrain from performing any act inconsistent with the liberation of the Meridionese people, top BIS management meeting in Septentrion explicitly decided to disregard vital provisions of the decree. BIS, from its inception, has been implicated in illegal political activity.

As MLA forces left the Southeast Province, and began to advance on the capital of Meridion, hostilities increased. MLA soldiers, aware of the conduct of BIS personnel, occupied all BIS facilities. At one BIS facility, an official admitted, after a violent confrontation, that the facility was used to harbor enemies of the revolution. This activity occurred during active hostilities. Even so, the director and three of his staff were afforded a trial. Since they were convicted by a People's Court of violating Decree 181, the director and two staff members were executed. The remaining staff member died from electric shock while in custody. This sentence by the People's Court was the only incident where BIS personnel were severely dealt with by MLA forces. However, there were reports of hostilities at a BIS hospital, involving persons wearing MLA uniforms.

As MLA forces began to advance on the capital of Meridion, many citizens voluntarily decided to leave the country. Approximately 40,000 people left

the capital bound for Septentrion: 10,000 by commercial airlines and 30,000 by sea. Eventually, an additional 5,000 people set sail before the fall of the capital. However, the Septentrionese Coast Guard intercepted these Meridionese vessels on the high seas and returned 4,000 people capable of making the voyage to Meridion. The Coast Guard then delivered the remaining 1,000 people to Septentrion.

Meanwhile, 27,000 of the 30,000 who had left by boat had reached Septentrion; 300 had been lost at sea. Septentrion herded the Meridionese people into prison-like camps of indefinite detention. The quarters were cramped, men were separated from their families and the inmates were denied all access to legal services. Under Septentrion's immigration law, people with special skills or close relatives in Septentrion were allowed to leave the camps, but all others were restricted to the camps and detained without any administrative or judicial remedies.

Representatives chosen by the Meridionese people in the camps attempted to meet with the Septentrionese Interior Ministry for admission as refugees to permanent residence in Septentrion. Their statement asserted the camps' inmates fell into three categories: 1) those requested to appear before the local PDRM authorities to account for their activities 2) those who said their citizenship had been revoked as a result of their departure from Meridion and 3) those who were looking for improved economic opportunities. The Septentrionese Interior Ministry refused to enter into any discussions with the Meridionese people in the camps.

Eventually, the People's Revolution was victorious and the new government issued Revolutionary Order No. 1. This government set out to investigate and bring to justice all perpetrators of anti-revolutionary acts. Since BIS personnel were suspected of belonging to this group, they were tried and convicted of all charges against them including violations of Decree 181, cultural genocide

of the Meridionese people, publication of seditious material, and violations of their residency permits. Since the security of the new government was essential, the judge presiding at the trials appointed substitute counsel and certain testimony was in writing to protect the identities of witnesses. All senior BIS officials were convicted of all charges against them. Due to the serious nature of the offenses, sentences of ten to thirty years hard labor were imposed.

## QUESTIONS PRESENTED

- I. Whether any multilateral conventions or general rules of international law, if at all applicable, were violated by an organized liberation movement fighting in an internal armed conflict, or by the government established after the successful revolution?
- II. Whether Septentrionesse nationals, voluntarily remaining in Meridion during a civil war, forfeited the protections of the multilateral conventions or general rules of international law, by committing wrongful acts intended to prevent the liberation of the Meridionesse people?
- III. Whether the People's Democratic Republic of Meridion is responsible and therefore liable for the voluntary migration by its nationals from Meridion to Septentrion which occurred during the Meridionesse conflict?
- IV. Whether Septentrion violated its international legal obligations by indefinitely detaining Meridionesse people without administrative or judicial remedies, and by intercepting Meridionesse vessels on the high seas and returning them to Meridionesse waters?

## SUMMARY OF ARGUMENT

The revolution in Meridion was a legitimate exercise of the right of the Meridionese people to self-determination. The treatment of BIS personnel both by the MLA and the PDRM fully conformed to international standards governing internal armed conflicts.

Pursuant to the doctrine of tabula rasa, the government of Meridion is not bound by any treaty obligations assumed by its predecessor. Assuming arguendo that these obligations did apply, BIS officials forfeited the minimal protections in Article 3 of the Geneva Convention by taking an active part in the hostilities. Indeed, the treatment of BIS personnel, both by the MLA and PDRM, was proper even if the protections of Article 3 are applicable. All BIS personnel were tried and convicted by regularly constituted courts which afforded all the procedural protections that were possible under the circumstances.

Even if the treatment of BIS officials had been below international standards, Septentrion is not entitled to an award of compensatory damages. Since BIS personnel voluntarily remained in Meridion they assumed the risk of injury inherent in an internal armed conflict.

The government of the PDRM is also not responsible and therefore not liable for the voluntary migration of people from Meridion to Septentrion. The PDRM did not encourage or ratify the migration which occurred prior to the formulation of the newly established government. Pursuant to the reasoning in Corfu Channel, the PDRM had no legal obligation to prevent the migration. The PDRM subsequently exercised its sovereign power when it established, in Revolutionary Order No. 1, criteria for citizenship which conformed to international conventions and municipal norms of numerous countries.

Moreover, Septentrion's interception of Meridionese vessels on the high seas is contrary to international principles of freedom of the seas. Septentrion's conduct in indefinitely detaining Meridionese people without an administrative or judicial remedy, violates the due process rights of the migrants.

I. THE TREATMENT OF BIS PERSONNEL BOTH BY THE MERIDIONESE LIBERATION ARMY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION, FULLY CONFORMED TO INTERNATIONAL STANDARDS GOVERNING WARS OF LIBERATION.

A. The revolution of the Meridionese people was a legitimate method of acquiring the right to self-determination.

The Charter of the United Nations has expressly recognized the right of a people to self-determination. U.N. CHARTER art. 1, para. 2 The existence of this right has frequently been confirmed by resolutions of the General Assembly as well as the Human Rights Covenants. See e.g., Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810, at 71 (1948); International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966); International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A, U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966). It is indisputable that when peaceable means of asserting the right are not satisfied, the people claiming it may resort to force.

The General Assembly recently reaffirmed its recognition of the legitimacy of the struggle of colonial peoples and peoples under alien domination to attain self-determination and independence by all the necessary means at their disposal. In fact, the General Assembly explicitly noted with satisfaction the progress made by various national liberation movements. G.A. Res. 2908, U.N. GAOR Supp. (No. 30) at 2, U.N. Doc. A/8730 (1972).

Although the Kingdom of Septentrion ostensibly granted independence to Meridion (formerly New Hibernia), the government of Meridion was a mere "puppet" manipulated by Septentrion to preclude the Meridionese people from attaining self-determination. This unrepresentative government, by joining the Septentrionese Confederation of States and by reaffirming all treaties made on its behalf by their former colonial oppressor, prevented Meridion from becoming an autonomous nation. As soon as the people attempted to express their disapproval, the government suspended all civil liberties. Eventually the people

organized into a resistance movement known as the Meridionese Liberation Army (hereinafter referred to as the MLA). Since the people of Meridion were being oppressed by Septentrion, by their own lackey government, and especially by BIS (posing as benefactors of the people), they initiated a revolution to liberate their nation and attain self-determination.

- B. BIS personnel, as alien civilians engaged in unlawful conduct during an internal armed conflict, are not protected by customary international law.

BIS, incorporated under the laws of Septentrion, constructed and operated numerous facilities throughout New Hibernia. Although Meridion technically became an independent nation free from all colonial influence, BIS facilities continued to be exclusively operated by nationals of the former colonial oppressor. These facilities mainly schools, community centers, and clinics, directly affected the educational and social development of the entire nation.

Over the years, Septentrionese BIS personnel have been accused of conducting illegal political activity. Therefore, all Septentrionese BIS employees were issued residency permits allowing them to reside in Meridion on the express condition that they would engage in no activity of a political nature.

Once the MLA was successful in controlling the Southeast Province they issued Decree 181, which was specifically directed toward BIS facilities. This decree ordered them to refrain from activities which have oppressed the Meridionese people. (APPENDIX A) Upon receiving notice of the decree, top BIS management, meeting in Septentrion, consciously decided to disregard pertinent provisions concerning the liberation of the Meridionese people.

Although this decision was a direct affront to the liberation movement, the conduct of MLA forces toward BIS personnel was never arbitrary or excessive.

Significantly, there were no incidents of injury inflicted by MLA soldiers while the MLA was stationed in the occupied territory of the Southeast Province. Reports indicated that hostilities occurred at a BIS hospital in the Province; however, the allegation that MLA soldiers were responsible are unconfirmed. Only after MLA forces advanced toward the capital did injuries occur, and these casualties were a natural consequence of the struggle necessary to gain control of the remaining territory.

Customary international law imposes no requirements with respect to the treatment of persons involved in an internal armed conflict. R. MILLER, THE LAW OF WAR, 17 (1975). The MLA was justified in executing BIS directors after it was discovered that they were harboring enemies of the revolution in facilities located in areas of military operations. Only those directly responsible for aiding the enemy were punished.

Although in the zone of open warfare, the suspected parties were provided a trial by a People's Court, and convicted of violating Decree 181. This trial and conviction of enemy aliens in the zone of military operations was the only incident where BIS personnel were harshly dealt with by MLA forces. In a public emergency where the government is fighting for its existence, immediate and severe punishment is necessary. A. BARKER, PRISONERS OF WAR 19, 278 (1975). Various measures of force may be applied against private enemy persons to prevent intercourse with and assistance to enemy forces, the extent of punishment is in the discretion of military authorities who will act according to expediency and rules of martial law. Capital punishment has been recognized as a lawful means of punishment. 2 L. OPPENHEIM, INTERNATIONAL LAW 346 (7th ed. H. Lauterpacht ed. 1952). MLA soldiers executed three directors pronounced guilty by the court and a fourth died from electric shock while in custody. The circumstances surrounding this death are unknown.

Since the actions by MLA soldiers conformed with legitimate military necessity, the government is relieved from liability. "As a general rule, a government which becomes the legitimate government of a state by a successful revolution . . . is not internationally liable for damages resulting from legitimate military operations of forces or authorities of successful revolutionaries". 8 M. WHITEMAN, DIGEST ON INTERNATIONAL LAW 819 (1965).

- C. According to the doctrine of tabula rasa, the newly independent People's Democratic Republic of Meridion is not bound by the treaty obligations of its predecessor.

The doctrine of tabula rasa provides that a newly created state starts life with a clean slate in respect to the treaty obligations of its predecessors. See e.g., H. Lester, State Succession to Treaties in the Commonwealth, 12 INT'L & COMP. L.Q. 488 (1963). The General Assembly has stated that in considering the question of state succession, the International Law Commission should pay appropriate attention to the views of states which have achieved independence since the Second World War. G.A. Res. 1765 (XVII) (1962). Professor Bokor-Szego explains that:

The emergence of new states takes place on the strength of the implementation of a fundamental principle of law in force — the right of self-determination. It follows from this that the resolution of the problem of state succession of new states should not be determined by the traditional rules of international law but by the principles of self-determination.

- A. BOKOR-SZEGO, NEW STATES AND INTERNATIONAL LAW, 77 (1970).

As a result, the traditional dichotomy of change of state and change of government may be of limited value under current world conditions and should be discarded. See, G. La Forest, Toward a Reformulation of the Law of State Succession, in PROCEEDINGS, A.S.I.L. 103 (Apr. 1966). The rise of new states as a result of decolonization represents a new type of state succession which necessitates a reformation of traditional theories. See e.g., O'Connell, Independence and Problems of State Succession, in UDOKANG, THE NEW NATIONS IN

INTERNATIONAL LAW AND DIPLOMACY 7 (1965).

The success of the MLA forces liberated the Meridionese people enabling them to exercise political, social, and cultural autonomy. The Meridionese revolution terminated Septentrionese oppression and eliminated all remnants of colonialism. The former government of Meridion did not act in the name of the people and any treaty obligations assumed by it do not bind the People's Democratic Republic of Meridion.

- D. Even if the treaties were binding, BIS officials, by taking an active part in the hostilities forfeited the minimal protections provided by the Civilian Convention.

The MLA was involved in an armed conflict totally within the territory of Meridion. Traditionally the law of war has never governed such internal conflicts. J. Bond, Proposed Revisions in the Law of War applicable to Internal Conflicts, 12 Santa Clara Law. 223, 243 (1972). However, since many innocent civilians have unnecessarily and indiscriminately been injured in some internal wars, the High Contracting Parties to the Geneva Convention Relative to the Protection of Civilian Persons in time of War (hereinafter referred to as the Civilian Convention), realized that certain minimum standards should be applied. Done, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287. This convention, along with the other Geneva Conventions, safeguard basic humanitarian principles. See, the Geneva Conventions for the Amelioration of the Wounded and Sick in Armed Forces in the Field, Done Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31, for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, Done Aug. 12, 1949, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85, and Relative to the Treatment of Prisoners of War, Done Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135.

With the single exception of Article 3, the Geneva Conventions apply solely to international disputes. Article 3 (common to all four Geneva Conven-

tions) provides minimal protections for armed conflicts not of an international character. The remaining articles do not apply to internal hostilities unless the parties to the conflict, by special agreement, bring them into force.

The protections of Article 3, although applicable to internal wars, are only accorded to persons taking no active part in the hostilities, and to members of the armed forces placed hors de combat. The Civilian Convention was only meant to protect innocent civilians. BIS management decided to undertake a policy of disregarding MLA decrees, continuing to oppress the Meridionese people by publishing seditious material, and harboring enemies of the revolution in facilities located in the field of military operations. Thus, they forfeited the limited protections accorded by the Civilian Convention by taking an active part in the hostilities. BIS officials must not be allowed to assume the guise of innocent civilians as a cover for their belligerent status.

1. The MLA's treatment of BIS officials, during active hostilities, conformed to the provisions of Article 3.

As MLA forces advanced on the capital of Meridion the hostilities increased considerably. The MLA, aware of past offenses committed by BIS personnel and considering the recent decision by BIS management to disregard Decree 181, captured all BIS facilities. At one facility, a BIS director admitted to MLA soldiers that the building was used as a hiding place for enemies of the revolution.

Although the safeguards of Article 3 were intended to protect innocent civilians, the MLA's treatment of the director and his staff conformed to the article's provisions. The suspected parties were tried by a People's Court which provided all the judicial guarantees that can realistically be expected of military tribunals operating in the battlefield. Although decree 181 was primarily promulgated for BIS facilities in the Southeast Province its application must not be restricted to this area. This decree essentially codified

the provision contained in Septentrionesse residency permits. Therefore, the prohibition against political activity applied to every Septentrionesse BIS employee in Meridion.

The director and his staff were found guilty of violating decree 181 and punished accordingly. Since deterrence is a major purpose of punishment, a lenient sentence would have seriously threatened the security and future success of military operations. The need for quick and severe punishment was imperative. See argument under Section I(B), supra at 2.

E. The trial and conviction of BIS officials by the People's Revolutionary Court were in full accordance with international standards.

At the close of hostilities the newly established government of Meridion, announced its intent to investigate and bring to justice all perpetrators of anti-revolutionary acts. (APPENDIX B) Since BIS officials were suspected of belonging to this group, they were tried and convicted by the People's Revolutionary Court. Unlike the military trial conducted in the battlefield, this court accorded to BIS officials the procedural protections that were not feasible during active hostilities.

While the International Covenant on Civil and Political Rights insures to individuals numerous procedural safeguards, Article 4 permits derogation from the full trial guarantees to the extent strictly required by the exigencies of the situation. In full accordance with this provision the judge presiding at the trials appointed substitute counsel for BIS officials since their choice of counsel was a security risk to the newly established government. Similarly, it is a general procedural principle that the testimony of a witness is only subject to cross examination if the witness personally appears in open court.

After a full trial the senior BIS officials were convicted of all charges against them. Certainly the sentence of ten to thirty years hard labor

cannot be viewed as arbitrary or excessive punishment in view of the serious nature of the offenses. One of these offenses was violating their residency permits. It must be emphasized that every Septentrionesse employee, upon entering Meridion, realized that he would be imprisoned if convicted of this offense. BIS officials were also convicted of violating Decree 181 and of publishing seditious materials.

Most importantly, BIS officials were found guilty of genocide. The MIA specifically addressed the issue of cultural genocide by BIS in Decree 181. This decree ordered that BIS staff refrain from: speaking in the Septentrionesse language, encouraging the conversion of Meridionesse nationals to the Septentrionesse religion, and performing acts inconsistent with the liberation of the Meridionesse people. BIS facilities, predominantly schools and community centers, were capable of providing excellent opportunities for BIS personnel to influence the impressionable children of Meridion. Similarly, BIS hospitals were a haven for the sick and defenseless who were vulnerable to alien coercion and propaganda.

Certainly the goal of BIS stated in 1890, namely: "to bring the gift of civilization to the world's backward people" cannot be implemented without tension when the "backward" people of Meridion in 1964 are engaged in a conflict to gain political, social, and cultural autonomy. The United Nations General Assembly has ascertained that genocide is a crime under international law contrary to the spirit of the United Nations and condemned by the civilized world. Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260A, U.N. Doc. A/810 at 174 (1948).

Article 6 of the Genocide Convention requires that persons charged with the crime of genocide be tried in the territory of the state in which the act was committed. Therefore, the People's Democratic Republic has exclusive jurisdiction over the trials of BIS personnel accused of genocide.

Article 133 of the Civilian Convention states that internees who have been sentenced to a punishment depriving them of their liberty, may be detained until the completion of the penalty. Since BIS personnel were convicted of serious crimes against the Meridionese people and sentenced to imprisonment, Meridion is under no obligation to repatriate BIS prisoners. All prisoners will be immediately released upon completion of their individual sentences.

II. EVEN IF THE TREATMENT OF BIS PERSONNEL WAS BELOW INTERNATIONAL STANDARDS, SEPTENTRION IS NOT ENTITLED TO AN AWARD OF COMPENSATORY DAMAGES.

A. The Kingdom of Septentrion, by acquiescing to the unlawful conduct of their nationals employed at BIS facilities in Meridion, is barred from espousing any claims for compensation.

In Revolutionary Order #1, the victorious revolutionary government celebrated the fact that the people of Meridion would no longer be subject to Septentrionese oppression. (APPENDIX B) Although there is no indication that Septentrion directly oppressed the Meridionese people, they must be held accountable for acquiescing in organized, unlawful activity by their nationals in their territory. Not only were employees of BIS facilities invariably Septentrionese nationals, but also the managing authority of BIS met in Septentrion when deciding to disregard provisions of Decree 181.

The General Assembly, in the Principles Concerning Friendly Relations and Cooperation among States, asserts that every state has an inalienable right to choose its political, social and cultural systems without interference in any form by another state. The General Assembly further declared that every state has the duty to refrain from organizing, instigating, assisting, or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activity within its territory directed towards the commission of such acts. G.A. Res. 2625, U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8082 (1970).

It is undisputable that Septentrion had notice of the actions of the MLA toward BIS facilities and personnel as evidenced by communications between the

ambassadors of the two nations. Since Septentrion made no attempt to regulate their nationals or prevent them from engaging in unlawful activity in Meridion, they must not be allowed to espouse a claim for compensatory damages.

1. Septentrion is not entitled to receive compensation for possible violations of the Covenant on Civil and Political Rights.

Septentrion has no standing to obtain a declaration that the MLA and the PDRM mistreated Meridionese citizens employed at BIS facilities. A state may only present a formal legal claim to another state as to conduct affecting its own nationals. See e.g., 1 L. OPPENHEIM, INTERNATIONAL LAW 347 (8th ed. H. Lauterpacht ed. 1955).

Indeed, Septentrion cannot receive compensatory damages on behalf of her own nationals for alleged violations of the Covenant on Civil and Political Rights. There is no provision in the Covenant leading to judicial determination of the existence (or the absence) of a violation. As a result a government will not be exposed in cases of doubt to the unpleasant consequences which would result from a judicial determination of a violation of an international obligation. See, A. Robertson, The U.N. Covenant on Civil and Political Rights and the European Convention on Human Rights, 43 BRIT. Y.B. INT'L L. 26, 36 (1968). Furthermore, under Article 41 of the covenant only states who are a party to the covenant can allege possible violations by another contracting state and then only by an exchange of written communications to the Human Rights Committee. Since Septentrion is not a party to the covenant she cannot file a complaint with the Human Rights Committee.

- B. By voluntarily remaining in Meridion during the course of hostilities, BIS personnel assumed the risk of injuries associated with warfare.

Civilians of a foreign state who remain in a territory engulfed in a civil uprising have traditionally been accorded no protection by international standards.

The effect of a continuous residence by aliens in the territory rent by civil war is to place them for practically all purposes in the same legal position as nationals. By remaining, they assume the risk of injury, within the limitations prescribed by the rules of war.

1 E. BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD, 236 (1915).

BIS management had direct notice of the continuing success of the MLA forces in controlling territory in Meridion. It is indisputable that BIS personnel could have left Meridion during the revolution, however, top management of BIS decided that their personnel would not only continue to remain in Meridion but would also undertake a policy of disregarding MLA decrees, continuing to oppress the Meridionese people by publishing seditious material, and aiding the enemies of the revolution. As a minimum the BIS management should have undertaken a policy of strict neutrality to insure the protection of their personnel.

C. Septentrion must be denied relief on equitable grounds.

Aliens who participate in internal hostilities should and generally do forfeit the protection of their own government. It is a general rule that an injury to an alien arising out of a breach or failure to observe the local law or police regulation involves a complete or partial forfeiture by the alien of the protection of his own government. International commissions have consistently upheld this rule. 2 Id. at 735. Professor Borchard explains that it is an established maxim of all law, municipal and international, that no one can profit by his own wrong, and that a plaintiff or a claimant must come to court with clean hands. BIS personnel, as mentioned, have not only violated the municipal laws of Meridion in violating their residency permits but have also committed the heinous crime of genocide condemned by international law. According to equitable principles, applied by the International Court of Justice, Septentrion should be estopped from pursuing any claims for compensation due to the censurable conduct of their nationals residing in Meridion.

III. THE GOVERNMENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION DID NOT VIOLATE ITS INTERNATIONAL OBLIGATIONS AS A RESULT OF THE MIGRATION OF PEOPLE FROM MERIDION TO SEPTENTRION

International migrations are a social phenomenon of the twentieth century. Since 1900, millions of migrants have left their homes voluntarily to seek economic and social opportunities in other countries. W. Smith, The Refugee Crisis: Solving the Problems, 67 A.B.A. J. 1464 (Nov. 1981). In fact, individuals are guaranteed the right to emigrate under international law and those nations that prevent emigration are branded totalitarian by the international community.

Septentrion now asks this Court to declare that the PDRM had an international obligation to prevent the emigration from Meridion to Septentrion. However Septentrion cannot demonstrate that the PDRM had any such responsibility. To establish a duty and an ensuing liability, Septentrion would have to demonstrate the presence of the three elements essential to a definition of responsibility in international law: an act or omission that violated an enforceable obligation between the two opposing States, an unlawful act or omission imputable to the State, and loss or damage resulting from the unlawful act or omission. E. Jimenez de Arechega, International Responsibility, in MANUAL OF PUBLIC INTERNATIONAL LAW 544 (Sorensen ed. 1968).

- A. Pursuant to the doctrine of Force Majeure, the migration occurred independently of the will of the state and is therefore not imputable to the People's Democratic Republic of Meridion.

A government which encourages or forces migration that injures another state would be responsible for such conduct under international law. The first Vietnamese asylees were a natural consequence of the internal strife in that country just as some of the Meridionese people in Septentrion are the spillover of a civil war. Subsequently, Vietnam's alleged policy of reducing the population for economic and political reasons caused further migrations. B. Wain, The

Indochina Refugee Crisis, 58 FOREIGN AFF. B. 160, 169 (1979) Similarly, Castro's scheme of allowing an exodus from Cuba was designed to embarrass the United States while ridding Cuba of undesirable elements. Smith, supra, at 1466. Mexico also appears to endorse migration of nationals by refusing to stop the flow. V. BRIGGS, MEXICO MIGRATION AND THE U.S. LABOR MARKET 21 (1975)

These examples are the antithesis of the facts before us. From the peaceful governing of the Southeast Province to the issuance of Revolutionary Order No. 1, the MLA and the PDRM demonstrated no discriminatory policies against the Meridionese people that would induce, encourage, or condone migrations.

Under general principles of law recognized in all countries, there is no responsibility if a damage ensues independently of the will of the state agent and as a result of force majeure. Such an external cause cannot be categorized as an act or omission in breach of an international duty, and imputable to the State.

E. Jimenez de Arechega, supra, at 544.

In further support of the PDRM's lack of responsibility for the migration, Judge Huber, in Report II on the British Claims in Spanish Morocco considered mutinies, revolts, civil wars (emphasis mine) and international wars as cases of force majeure and as excluding international responsibility. 2 R. Int'l Arb. Awards 615, 642 (1924).

B. The People's Democratic Republic of Meridion had no knowledge of the migration which would give rise to a legal obligation to prevent it.

In the Corfu Channel case between Great Britain and Albania, the International Court held that a state is not liable for the injury of another state solely because the injury occurred on the territory of the former. 1949 I.C.J. 4, 18. In that case, forty-five British sailors died when their ship struck mines planted in Albanian waters. While the Court ascertained that Albania neither encouraged nor acquiesced in the laying of the mines, the Court concentrated on Albania's actual knowledge of the existence of the mines and

based its decision on evidence of that knowledge. The Court found that Albania could have easily guarded the Channel due to its geographic configuration, and in fact did keep a heavy surveillance of the channel waters.

Under the reasoning of Corfu Channel, the PDRM was without the necessary knowledge of the migration of Septentrion. The departures occurred during active hostilities and before the formation of the PDRM government. Forty thousand people had left before the MLA reached the capital. The remaining five thousand exited before or during the battle for control of the capital. Administrative details such as departures by dissatisfied citizens would not be a priority of the MLA during the struggle to liberate the nation.

Moreover, the MLA and the PDRM lacked exclusive territorial control over the country. Even in normal circumstances, a government cannot always effectively control a mass movement. The prevention of the exodus from Meridion was an impossibility since neither side was in control. Thus, even if knowledge of the migration could be established, it does not lead to a capability to prevent the exodus.

By contrast, the Court in Corfu found that Albania had both the knowledge and the power and therefore the legal obligation to prevent the deaths of British sailors.

The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based, not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.

1949 I.C.J. 4, 22.

The facts in Trail Smelter Arbitration are also dissimilar from the

instant case. In Trail Smelter, the Court held that Canada was responsible for its citizens' air pollution in Canada which caused injury in the United States. 3 R. Int'l Arb. Awards 1905 (1949). The opinion is a narrow one and restricted to a finding of clear and convincing injury by harmful fumes. In addition, the definition of the word "damage", on which the decision is based, did not include occasional damage or that caused by unusual conditions in the atmosphere. Under the definition of damage assigned by the Court in Trail Smelter, the MLA and the PDRM would not be found liable for the extraordinary migrations which occurred during the unusual circumstances of internal conflict. While the operation of the smelter could have been modified to eliminate the most serious injuries, the MLA and the PDRM lacked sufficient control over the Meridionese people to modify their plans for departure. In fact, the Meridionese people possess certain inviolable rights and guarantees under treaties and conventions which add dimensions to the migrants' situation that will never be an issue in air pollution. According to the Universal Declaration on Human Rights, "Everyone has the right to leave any country, including his own, and to return to his country." art. 13, para. 2. Thus, it would be a futile exercise to try to equate or analogize the infliction of clear and convincing injury by air pollution and the arrival of immigrants in Septentrion.

- C. Septentrion did not establish loss or damage as a result of the migration and is therefore not entitled to relief for feeding and housing the Meridionese people.

Septentrion offers no proof of loss on which this Court could base a damage judgment. Loss must be viewed from both a short-term and a long-term perspective. While Septentrion is presently incurring expense as a result of the migration, Septentrion will ultimately benefit from the professional, skilled, and even unskilled labor of Meridionese citizens. Multiplying the number of migrants by an estimated work life for each will give a rough estimate

of the economic loss to the People's Government. Already, Septentrion has released from the camps all citizens capable of making an economic contribution to Septentrion's economy and creating an immediate monetary loss to the Revolutionary Government. And if unskilled labor is not presently attractive in Septentrion's economy, there is nothing to prove that it will not become valuable over a period of years. Since World War II, many countries have received substantial benefit from granting asylum to people who find themselves unprotected by a new government. It is entirely possible that Septentrion would be found indebted, in a comprehensive accounting, to the Revolutionary Government for the drain on its intellectual community as well as its labor force.

1. Even if injury occurred, the People's Democratic Republic of Meridion is not liable to Septentrion for economic loss resulting from the migration.

The existence of an obligation or injury in international law does not bind all States to a legal interest in it. In order to make a claim against a particular state the Claimant must first establish a legal nexus: "The first is that the defendant State has broken an obligation toward the national State . . . The second is that only the party to whom an international obligation is due can bring a claim in respect of its breach." Reparation for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174, 181. It has already been established that the PDRM had no legal obligation to prevent the migration and the PDRM did nothing to ratify or consent to the allegedly injurious act. The limitations on this liability in international law are clearly demonstrated in arbitral and judicial practice.

Commissioner Nielsen, in his opinion in MacAndrews and Forbes, Co. (United States v. Turkey) said:

. . . It is possible that conditions of war in Turkey made the conduct of business operations unprofitable or entirely impracticable. War has often been responsible for such conditions. But

such a situation did not result in legal liability of the Government of Turkey in the absence of a specific showing of the taking or wanton destruction of property.

Nielsen's Opinions and Report 87, 96 (1937). See, Walter A. Noyes (U.S. v. Pan), United States and Panamanian General Claims Arbitration 216, R. Int'l Arb. Awards 307, 311 (1933).

Where there has been no ratification, consent or proof of responsibility as defined in international law, and where the alleged injury is an indirect result of proper conduct of war, no compensation should issue.

2. Septentrion cannot benefit from its own wrongful conduct and should therefore be denied relief.

Septentrion failed to mitigate damages incurred in housing and feeding the Meridionese people. As Judge Alfara stated in the Temple of Preah Vihear case, 1962, "A State must not be permitted to benefit by its inconsistency to the prejudice of another State." 1962 I.C.J. 4, 40 (separate concurring opinion).

Septentrion asks for relief for refugees but will not determine which of the Meridionese people are refugees. If Septentrion had begun review procedures upon the immigrants' arrival, the relief requested would not have been incurred as the aliens could have been sent home.

D. The People's Democratic Republic of Meridion did not violate international law in applying deprivation of nationality in Revolutionary Order No. 1.

Under customary international law, the conferment and revocation of nationality is an integral element of state sovereignty and no international law prohibits such measures. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 391 (3d ed. 1973). While the State may not arbitrarily deny the individual his citizenship, Declaration of Human Rights of 1948, art. 15, para. 2, the Convention on the Reduction of Statelessness, G.A. Res. 896 (IX) (1961), pro-

vides that a state may revoke citizenship if an individual had conducted himself in a manner seriously prejudicial to the vital interest of the State or given definite evidence of his determination to repudiate his allegiance to the State. See, art. 8.

Municipal law governs the grounds on which nationals may lose their citizenship. Some examples of various states' criteria are informative. According to the United States Act of 1952, grounds for deprivation of nationality include: committing an act of treason against the United States, departing or remaining outside the United States jurisdiction in time of war or during a period of national emergency for the purpose of avoiding training and service in the United States Armed Forces. In the United Kingdom, deprivation of nationality may occur if the individual has been disloyal towards Her Majesty or has lawfully traded or communicated with an enemy during war. S. Oda, The Individual in International Law, in MANUAL OF PUBLIC INTERNATIONAL LAW 469, 478 (Sorensen ed. 1968).

Revolutionary Order No. 1 which threatens loss of citizenship falls well within the current norms of international conventions and municipal laws of other states. It applies only to counter-revolutionaries who represent a danger to the vital interests of the new government.

#### IV. SEPTENTRION'S ACTIONS IN DETAINING AND DECLINING TO RESETTLE THE MERIDIONESE PEOPLE AND IN RETURNING 4000 MERIDIONESE TO THEIR OWN WATERS VIOLATE THE PROTOCOL RELATING TO THE STATUS OF REFUGEES AND CUSTOMARY INTERNATIONAL LAW

The principle of state sovereignty enables one State to enter into a treaty and interpret it without obtaining agreement as to the interpretation by the other Contracting State. This is true also of a state's interpretation of "refugee" in the Protocol Relating to the Status of Refugees (hereinafter Protocol) Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267.

While the PDRM does not acknowledge that any of the Meridionese people in Septentrion are refugees, Septentrion, as a party to the Protocol, must consider the minimum provisions of the Protocol operative.

A. The detention of Meridionese refugees violates Article 31 of the Protocol.

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are in their territory without authorization, provided they present themselves without delay to the authorities and to show good cause for their illegal entry or presence.

Protocol, art. 31, para. 1.

Once a refugee has set foot in a country of refuge, he will come under Article 31 of the Protocol. 2 GRAHL-MADSEN, THE STATUS OF REFUGEES IN INTERNATIONAL LAW, 435 (1972). Those who left Meridion and arrived in Septentrion by air and water are deemed to have come directly. Id. at 206. While they did not enter clandestinely but were arrested for attempted unauthorized entry, the Meridionese people sent representatives to the Interior Ministry to explain the reason for their unauthorized presence in full conformity with the provisions of Article 31, para. 1.

Article 31, para. 2 permits restriction of movement only as necessary and until regularization of status. The British Delegate to the Conference of Plenipotentiaries, Sir Hoare, affirmed the Conference's intent that Article 31, para. 2 established a time limit which on expiration would leave Article 26 (right of freedom of movement) operative for the refugees. U.N. Doc. A/CONF. 2/SR. 14, 17. Restrictions as necessary and pending regularization of status are the only guidelines in the Article for deciphering the time limit. As a result, the case law on necessary restriction is informative. Grahl-Madsen asserts that Courts of many countries have tried to deal with the unwanted

refugee problem and the general agreement of the cases is no one should be held or detained for an unduly long time or more than four months. 2 A. GRAHL-MADSEN, supra, at 442. Many of the Meridionese people have been in detention for over a year and ten thousand (those who arrived by air) have been detained for at least nineteen months.

Septentrion is bound by article 31 not to impose penalties because of the refugees' status. The Meridionese people have been subjected to indefinite detention without the first initiation of a regularization proceeding. By refusing to discuss any grounds for possible admission under the Protocol, the Interior Ministry reveals the basis of Septentrionese policy toward these people: arrest without regularization or resettlement efforts in Septentrion or any other country. This is a direct violation of Septentrion's obligation under the Protocol.

- B. Septentrion's immigration law which denies all judicial and administrative remedies violates the due process rights of the Meridionese people.

Under the minimum standard of international law, the State is required to provide those detained with some kind of timely judicial process. A. ROTH, MINIMUM STANDARD OF INTERNATIONAL LAW APPLIED TO ALIENS 181 (1949). Septentrion has violated the minimum standards of due process by detaining the Meridionese people without access to counsel and without judicial or administrative remedies of any kind. Septentrion has placed the immigrants in prison-like camps under penal-like conditions: Quarters are cramped, men are separated from their families and inmates are restricted to their camps. The Meridionese people have become in effect the prisoners of Septentrion without committing a criminal act.

Article 9, para. 4 of the Covenant on Civil and Political Rights guarantees:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that

court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Brownlie, on the subject of the Covenant, asserts that the essence of its subject matter represents "authoritative evidence of the content of the concept of human rights as it appears in the Charter of the United Nations and is applicable even to nonparties". I. BROWNLIE, BASIC DOCUMENTS IN INTERNATIONAL LAW, 150 (2d ed. 1972).

The Covenant is the codification of the Declaration of Human Rights and as such is the binding law of all civilized nations. I.C.J. Stat. art. 38, para. c. Septentrion, while not a party to the Covenant, is bound by humanitarian standards recognized by all civilized nations. Septentrion's immigration law denies all administrative or judicial remedy to those detained and is in violation of the due process rights guaranteed in the Declaration of Human Rights as codified in the Covenant, and customary international law.

Moreover, Septentrion's municipal law does not prevail over international law. Judge Spender in a separate opinion in the Guardianship of Infants case stated "treaty and conventional obligations were to be faithfully observed: the provision of municipal law could not prevail over those of treaty or convention." 1958 I.C.J. 120 (separate opinion)

C. Septentrion's forcible return of Meridionese people to their own waters is in violation of the Protocol and customary international law.

1. Septentrion's forcible escort of the Meridionese people on the high seas violated the doctrine of freedom of the seas.

Freedom of navigation and freedom from arrest are both concepts basic to the notion of freedom of the seas. 2 O'CONNELL INTERNATIONAL LAW 645 (2d ed. 1970). "All nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation." The Lotus, 2 Dods. 210, 243 (1917). "It follows that no State may interfere with the ships

of another or exercise jurisdiction over them upon the high seas . . . ." 2  
O'Connell, supra, at 646.

This law has been codified in Article 11, para. 3, Geneva Convention on the High Seas, 1958: "No arrest or detention of a ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag state". Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82.

The escorted return of 4000 boat people to Meridionese waters by the Septentrionese Coastal Guard is a violation of freedom of the high seas. As Meridionese citizens, the boat people were immune under international law from investigation and force of any kind, including an unrequested return to their borders. Under international law, the PDRM would have the final decision on whether a ship carried the proper papers to be a Meridionese vessel. C. Colombos, INTERNATIONAL LAW OF THE SEA (5th ed. 1962). In addition, international law does not permit anticipatory action for an offense against municipal law outside the State's Jurisdiction. The Costa Rica Packet, (G.B. v. The Netherlands), Moore, I.A. 4948 (1897) Septentrion was legally required to wait until the boat people reached its territorial waters before exercising any kind of jurisdiction over Meridionese citizens.

2. Septentrion's return of the boat people to Meridionese waters violated the principle of non-refoulement in the Protocol.

Article 33 of the Protocol states: "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." Septentrion, without any adjudication as to status, delivered the boat people to the very country of their departure even though their indisputable intent was to leave Meridion.

Septentrion's actions are in violation of the literal language of Article 33 since no stipulation as to geographic location of the refugees exists. In addition, the official Comments of the Draft Committee refer to the Refugee Convention of 1933 which forbids the Contracting State to refuse entry to refugees at the frontiers of their countries of origin. Since the stated objective of the Committee is to provide at least as much protection as provided by previous agreements, the Committee emphasizes its overriding concern with refoulement at the expense of a legalistic interpretation of physical location in the country of asylum. 11 U.N. ESCOR Annex II (Agenda Item 32) 61, U.N. Doc. E/1618/AC. 32/5 (1950). Septentrion therefore intercepted the migrants illegally and, in returning them, violated the literal language as well as the spirit of the Protocol on non-refoulement.

#### CONCLUSION

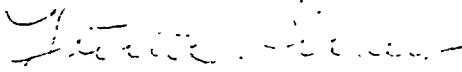
It is respectfully requested that this honorable Court:

1. Decline to grant Septentrion a declaration that the treatment of BIS personnel was covered by or in violation of international law.
2. Decline to grant Septentrion a declaration that the Government of the People's Democratic Republic of Meridion caused the mass migration of people from Meridion to Septentrion violating its international obligations.
3. Grant Meridion a declaration that Septentrion's actions in detaining Meridionese persons in Septentrion, in declining to resettle detainees into Septentrionese society, and in forcibly returning others to Meridion, were in violation of international law.
4. Deny Septentrion an order for the repatriation of BIS prisoners until such time as their sentences are completed.
5. Deny Septentrion's request for compensatory damages for the in-

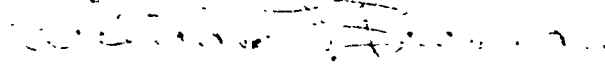
juries suffered by BIS personnel and their families, and for the cost of housing and feeding Meridionese migrants.

Respectfully submitted,

Natalie Blaney



William L. Brennan



APPENDIX A

Decree No. 181

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."

APPENDIX B

Revolutionary Order No. 1

Glory to the Meridionese Revolution! The people are victorious, the oppressors defeated! In the name of the Revolution, it is hereby ordered:

- (1) The name of our beloved nation is the People's Democratic Republic of Meridion.

- (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 anti-revolutionary 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.