

IN THE INTERNATIONAL COURT OF JUSTICE AT THE
PEACE PALACE, THE HAGUE,
NETHERLANDS

APRIL TERM, 1982

KINGDOM OF SEPTENTRION

Applicant

v.

PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION

Respondent

MEMORIAL FOR THE APPLICANT

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1949 Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field, 75 U.N.T.S. 31	
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1949 Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Ship-wrecked Members of the Armed Forces at Sea, 75 U.N.T.S. 85	
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1977 Protocol II of the Protocols Additional to the Geneva Conventions of 1949, reprinted in 16 INT'L LEGAL MATERIALS, 1391 (1977)	5, 6, 7, 8
Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Resolution 3452 (XXX) Dec. 9, 1975, U.N. Doc. Suppl. No. 34 (A/10034)	5, 9
1948 Universal Declaration on Human Rights G.A. Resolution 217A (III) G.A.O.R., 3rd Session, Part I Resolutions at 17	5, 6, 9, 10, 11
American Convention on Human Rights 1969, reprinted in 9 INT'L LEGAL MATERIALS 273 (1970)	5, 9
1966 International Covenant on Civil and Political Rights, G.A. Rev. 2700, 21 U.N. G.A.O.R. Supp. (No. 16) 49 U.N. Doc. A/3616 (1966)	5, 6, 9, 12, 13
European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, U.K.T.S. 70 (1950), Cmnd. 8969	5, 6, 9
American Declaration of Rights and Duties of Man, OAS, OR, OEA/Ser. L/V/E. 23. Doc. 21 Rev. 2 (1948).	6, 9

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Charters of the Nuremberg Tribunal reprinted in 35 AM. J. INT'L L. (1945)	6
NATO Status of Forces Agreement, 1951, T.I.A.S. 2846	6
Charter of the United Nations, 59 Stat 1031 (1945) T.S. No. 993	11
Declaration on the granting of Independence to Colonial Countries and Peoples, G.A. Resolution 1514 (XVIII) Nov. 20, 1963, reprinted in 3 INT'L LEGAL MATERIALS 164 (1964).	11
Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations 1970, G.A. Resolution 2625 (XXV), reprinted in 9 INT'L LEGAL MATERIALS 1292 (1970)	11, 16
1969 Vienna Convention on the Law of Treaties, reprinted in 63 AM. J. INT'L L. 875 (1969)	11
1948 Convention on the Prevention of the Crime of Genocide, 78 U.N.T.S. 278	14
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1967 Treaty on Principles Governing the Activities of States in the Exploration and the Use of Outer Space, Including the Moon and Other Celestial Bodies, 10 U.K.T.S. 3519 Art. 7	16
Stockholm Declaration on The Human Environment, 11 INT'L L.M. 1416 (1972)	16

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1967 Declaration on Territorial Asylum, U.N.G.A. Off. Rec. 22nd Sess., Supp. No. 16, at 81 General Reference	22
Art. 3	22
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 <u>TREATISES</u>	
J. PICTET, COMMENTARY ON THE GENEVA CONVENTIONS RELATIVE TO THE TREATMENT OF PRISONERS OF WAR (1966)	4
1 L. OPPENHEIM, INTERNATIONAL LAW (8th ed. 1955)	4
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N. ROBINSON, CONVENTION RELATING TO THE STATUS OF REFUGEES: ITS HISTORY, CONTENTS AND INTERPRETATION (1953)	19
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I. BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW (3d ed. 1979)	16
2 GRAHL-MADSEN, THE STATUS OF REFUGEES IN INTERNATIONAL LAW (1972)	22
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CASES

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<u>Faulkner Claim</u> , 4 R. INT'L ARB. AWARDS 67	8
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<u>Lawless v Ireland</u> , Application No. 332/57, 2 Y.B. EUR. CONV. 308 (1958/59)	13
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<u>Chorzow Factory Case</u> , [1928] P.C.I.J. Ser. A, No. 17 at 47	9, 10, 18
<u>Administration of the Prince von Pless</u> , P.C.I.J. Ser. C, No. 70, p. 134	15
<u>Phosphates in Morocco Case</u> , P.C.I.J. Ser. A/B, No. 74 at 15	15
<u>Barcelona Traction, Light and Power Company, Limited (preliminary objections)</u> , [1964] I.C.J. Rep. 114 ..	15
<u>Panevezys-Saldutiskis Railway Case</u> , P.C.I.J. Ser. A/B, No. 76 at 47	15;
<u>The S.S. Wimbledon Case</u> , [1923] P.C.I.J. Ser. A. No. 1 ..	20
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JOURNALS

<u>Borrowdale, The Future of the Law of War: The Place of the Additional Protocols of 1977 in Customary International Law</u> , 15 COMP. INT'L L.J. OF S'THERN AFRICA 81 (1981)	3
<u>Cassese, The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflicts</u> , 30 INT'L COMP. L.Q. 416 (1981)	3, 4
<u>Levie, Mal-treatment of Prisoners of War in Vietnam</u> , B.U.L. REV. 323 (1969)	3
<u>Hooker and Savasten, The Geneva Convention of 1949: Application in the Vietnamese Conflict</u> , 5-6 VIRG. J. INT'L L. 243 (1964-66)	3, 7
<u>Forsythe, Legal Management of Internal War</u> , 72 AM.J. INT'L L. 272 (1978)	3
<u>Santiago, Humanitarian Law in Armed Conflicts: Protocols I and II of the 1949 Geneva Conventions</u> , 54 Philippine L.J. 188 (1979)	3
<u>Smith, The Geneva Prisoner of War Convention: An Appraisal</u> , 42 N.Y.U.L. REV. 880 (1967)	3
<u>Baxter, Humanitarian Law or Humanitarian Politics: The 1974 Diplomatic Conference on Humanitarian Law</u> , 16 HARV. INT'L L.J. 1 (1975)	3
<u>Orfield, What Constitutes Fair Criminal Procedure</u> , U. PITT. L. REV. 35 (1950)	6
<u>Bond, Protection of Non-Combatants in Guerilla Wars</u> , 12 WM. MARY L. REV. 787 (1971)	6
<u>Harris, The Right to a Fair Trial in Criminal Proceedings as a Human Right</u> , 16 I.C.L.A. 352 (1967)	6

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Kelly, <u>Legal Aspects of Military Operations in Counter-insurgency</u> , 21 MIL. L. REV. 95 (1963)	7
Stowell, <u>The Robinson Case</u> , 32 AM. J. INT'L L. 324 (1938)	8
McDougall, <u>Human Rights and World Public Order</u> , 14 VIRG. J. INT'L L. 387 (1974)	9
Hoof, <u>The Protection of Human Rights and the Impact of Emergency Situations under International Law with Special Reference to the Present Situation in Chile</u> , 16 HUMAN RIGHTS J. 213 (1977)	11, 13
Khan, <u>Legal Problems Relating to Refugees and Displaced Persons</u> , 149 RECUEIL DES COURS 287 (1976)	21
Weis, <u>The Draft United Nations Convention on Territorial Asylum</u> , BRIT. Y.B. INT'L L. 151 (1979)	21
Pugush, <u>The Dilemma of the Sea Refugee: Rescue Without Refuge</u> , 18 HARV. J. INT'L L. 577 (1977)	21
Weis, <u>The United Nations Declaration on Territorial Asylum</u> , 7 CAN. Y.B. INT'L L. 92 (1969)	22
Arguilo, <u>Chinese Nuclear Test and Transnational Radioactive Pollution</u> , 3 ASILS INT'L L.J. 63 (1979)	16
Jennings, <u>Some International Law Aspects of the Refugee Question</u> , 20 BRIT. Y.B. INT'L L. 98 (1939)	18
Nawaz, <u>Bangla Desh and International Law</u> , 11 INDIAN v. INT'L L. 251 (1971)	18

MISCELLANEOUS

Levie, <u>When Battle Rages, How Can Law Protect</u> , Working Paper and Proceedings of the 14th Hammarskjold Forum (1971)	3
Draft Convention on Jurisdiction with Respect of Crime, prepared by the Harvard Law School Research Team in International Law reproduced in 29 AM. J. INT'L L. 437(1935) Art. 12	8

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Draft Articles on State Responsibility prepared by the International Law Commission. /1975/ 2 Y.B. INT'L L. COMM. 60, U.N. Doc. No. A/CN. 4/Ser. A/1975/Add. 1 Art. 5	10
Proclamation of Tehran, adopted by the International Conference on Human Rights at Tehran, reproduced in Human Rights: A compilation of International Instruments of the United Nations (1973) ST/HR/1	11
Final Act of the International Conference on Human Rights, Tehran, Iran May 13. 1968, reproduced in Human Rights: A Compilation of International Instruments of the United Nations (1973) ST/HR/3 ..	11
" <u>Refugees or Prisoners</u> ", Newsweek, Feb. 1 (1982) at 26 ..	21
Report of the Ad Hoc Committee on Statelessness 11 U.N. ESCOR Annex II, 61 U.N. Doc.	22
Group of Experts, 1975 Geneva Annex 10 U.N. Doc. A/10177.	22

J U R I S D I C T I O N

The Governments of the Kingdom of Septentrion and the People's Democratic Republic of Meridion have submitted the following controversy for resolution by the International Court of Justice pursuant to paragraph 1 of Article 36 of the Statute of the International Court of Justice. The Parties have not qualified the jurisdiction or competence of this court.

QUESTIONS PRESENTED

- 1) Whether the PDRM is responsible under international law for the treatment of BIS personnel and the killing of patients in a BIS hospital in Meridion. — *is a claim made on behalf of those people?*
- 2) Whether the People's Democratic Republic of Meridion is responsible to Septentrion for damage resulting from the migration of people from Meridion to Septentrion. *why do you single out that incident?*
- 3) Whether the Kingdom of Septentrion was in breach of its international obligations with regard to its treatment of Meridionese persons.
- 4) Whether the Kingdom of Septentrion's actions in intercepting on the high seas boats belonging to persons who had left Meridion and in returning these people to Meridion were in violation of international law.
- 5) Whether the People's Democratic Republic of Meridion is under a legal obligation to repatriate all BIS prisoners.
- 6) Whether the Kingdom of Septentrion is entitled to an award of compensatory damages for the injuries suffered by BIS personnel and their families, and for the costs of housing and feeding Meridionese persons.

S U M M A R Y O F F A C T S

Since 1902, the Benefactors International Society, Ltd. (hereinafter 'BIS'), a charitable organisation incorporated under the laws of the Kingdom of Septentrion (hereinafter 'Septentrion'), has been operating schools, hospitals, clinics, and rural community centres throughout New Hibernia. This former colony of Septentrion attained its independence in 1964 and took the name of the Republic of Meridion (hereinafter 'ROM'). The ROM expressly reaffirmed all treaty commitments made on its behalf by Septentrion, and was granted membership in the United Nations.

Following independence, the ROM was plagued by a series of uprisings engineered by the Meridionese Liberation Army (hereinafter 'MLA'). In 1970, a state of emergency was declared. By 1976 the MLA had gained control of virtually all of Southeast Province. On January 15, 1976 the MLA issued Decree No. 181 specifying various orders with respect to the BIS hospitals and schools in Southeast Province.

(a) The Hospital Incident

In September 1976, MLA forces attacked a BIS hospital and massacred thirty-five patients, alleged to be soldiers of the ROM. In addition, twenty BIS employees and volunteers were seized, forcibly detained and held incommunicado by the MLA forces. The Septentrionese government lodged a protest with the government of the ROM who denied all responsibility.

(b) The School Incident

By early 1977, all the BIS facilities had been captured. At Polis in Central Province, a division of MLA forces overran a BIS school and took its director prisoner. The Director was given a severe

beating. He was forced to confess that the school had been used as a hiding place for local officials of the ROM. The Director and three of his staff were tried and convicted by a "People's Court" of violating Decree No. 181. The accused were not accorded the right to counsel or to testify on their own behalf. An MLA firing squad summarily shot three of them and the fourth died in custody as a result of injuries sustained from electric shock.

(c) The Trial of the Senior Septentrionese BIS personnel by the People's Revolutionary Court (hereinafter 'PRC')

On September 30, 1977, after the MLA had captured the capital and taken control, the newly formed government, the People's Democratic Republic of Meridion (hereinafter 'PDRM') established the People's Revolutionary Court. This court convicted all of the senior Septentrionese BIS officials in Meridion for violations of Decree No. 181, cultural genocide, publication of seditious material and violations of the terms of their residence permits.

The accused were not granted the right to counsel of their own choosing or to cross-examine certain witnesses against them whose evidence was tendered in writing. On conviction, the accused, several of whom were over sixty-five years of age, were sentenced to a maximum of thirty years at hard labour. In addition, counsel appointed for the accused failed to file appeals within the stipulated time.

(d) The Mass Migration of Persons from Meridion to Septentrion

As the MLA forces began to advance on the capital in early 1977, many deaths and injuries were reported. Thousands of people fearing for their lives attempted to flee Meridion. Some 40,000 people fled for Septentrion - 10,000 by air and the rest by makeshift boats. Of these, 37,000 arrived in Septentrion while the rest were lost at sea.

(e) The Temporary Resettlement Camps

The persons who arrived in Septentrion were without the necessary travel documents. Nationals of states other than Meridion were permitted to ^{proceed} return directly to their countries. The Meridionese persons had earlier been declared 'enemies' by the PDRM and they therefore had to be accommodated by Septentrion. They were housed in temporary resettlement camps. They were provided with adequate food and medical facilities. By Septentrion's municipal laws they were not entitled to be afforded judicial or administrative remedies nor were they afforded legal services.

(f) The Interception on the High Seas

On June 30, 1977, the Septentrionese Coastal Service intercepted and returned to the PDRM the boats of some of the persons who had earlier departed from Meridion. The interception occurred on the high seas.

(g) Submission to the International Court of Justice

Responding to the pleas made by the United Nations Secretary General, the PDRM and Septentrion agreed to submit the issues arising from the foregoing facts to the International Court of Justice.

(h) Relevant International Treaties

The ROM and Septentrion are parties to the Geneva Conventions of 1949 and the 1967 Protocol Relating to the Status of Refugees. The ROM had also become a party to the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights, while Septentrion had signed but not ratified the two Covenants. Both the PDRM and Septentrion are parties to the 1977 Protocols Additional to the Geneva Conventions of 1949.

Meridion (both the ROM and PDRM) and Septentrion are and were members of the United Nations at all material times.

SUMMARY OF ARGUMENTS

The law of nations is in a constant state of development with its ultimate goal ^{of all intl law?} being the recognition of the inherent dignity and the equal and inalienable rights of each and every human being. Members of the international community have, through the auspices of the United Nations (hereinafter U.N.) and in cooperation with that organisation, repeatedly pledged themselves to achieve the promotion of universal respect for an observance of the fundamental human rights and freedoms as an essential prerequisite for the maintenance of world public order.

The view, once widely held, that a state's treatment of its own citizens is beyond the purview of international law has no longer any credibility. Changing attitudes in today's interdependent world have led to an international law based on the equality of peoples and now forms the basis of the fundamental guarantees accorded to all individuals. This policy underscores all the issues before this honourable court and must be constantly borne in mind in determining the rights and liabilities of the respective parties to this dispute.

1. During the hostilities

The People's Democratic Republic of Meridion (hereinafter PDRM) is responsible for all acts of the Meridionese Liberation Army (hereinafter MLA) during the hostilities which were in contravention of Common Article 3 of the Geneva Conventions of 1949 (hereinafter Art. 3).

(a) The school incident

MLA forces tortured and treated cruelly nationals of the Kingdom of Septentrion in violation of the basic standard of treatment set out in Art. 3. Furthermore, four nationals of the Kingdom of Septentrion

(hereinafter Septentrion) were tried by an irregularly constituted People's Court without any attempt on the part of the MLA forces to secure to them the essential guarantees of a fair trial.

(b) The hospital incident

The MLA violated the elementary dictates of humanity by flouting the rights of all individuals (especially medical personnel in times of war) to be protected and to be treated humanely. This the MLA did when they held the medical personnel in the Benefactors International Society's (hereinafter BIS) hospital incommunicado. The PDRM is also responsible for the massacre of the wounded and sick in the BIS hospital. This barbarous act by the MLA demonstrated a complete disregard and contempt for the most fundamental of all human rights - the right to life.

2. After the hostilities

The PDRM, as a member of the U.N. and a party to the 1966 Covenant on Civil and Political Rights, ^{can you enforce it?} was and is under an obligation to promote and respect human rights. Apparent breaches of this obligation give Septentrion the right to seek a declaration that the PDRM's actions were in violation of international law.

(a) The trial of the senior Septentrionese BIS officials before the People's Revolutionary Court

The PDRM acted in derogation of its obligation under international law to accord to each and every accused the right to a fair trial by flagrantly violating the principle nullem crimen sine lege, nulla poena sine lege and by disregarding the dictates of natural justice which compel every state to accord basic procedural guarantees to accused persons. In addition, the severe punishment of the aged offends against the fundamental norms of humanity and common morality.

Can this Court
apply such norms.

3. Mass migration of persons from Meridion to Septentrion

The state of Meridion breached its international obligations because it failed to ensure that activities conducted within its territory did not cause damage to other states. Underlying this ^{which?} proposition is the principle of sovereign equality of states and the respect of each other's territory. This principle is fundamental to the preservation of international peace and security.

4. Detention of Meridionese persons in the temporary settlement camps

While it is a principle of importance that the fundamental rights of all individuals should be respected, it is also an inalienable right of every state to take all necessary steps to safeguard its national economic and political well-being. However the exercise of ^{consistent 1(3) supra?} this right of self-preservation must in all circumstances be carried out in good faith. Septentrion, while detaining the vast numbers of Meridionese persons in order to safeguard its own well-being, at all times demonstrated to these people its good faith by providing the basic necessities of life in the form of adequate food, shelter and medical aid.

5. Return of Meridionese persons intercepted on the high seas

The interception of the Meridionese vessels on the high seas was also necessary for the self-preservation [?] of the national security of Septentrion. Good faith was demonstrated by the act of accepting persons whose vessels were incapable of making the return journey. In addition, the Septentrionese authorities did not abandon the remaining vessels but endeavoured to escort them back to Meridion territory.

ARGUMENTS AND AUTHORITIES

I. THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION (HEREINAFTER 'PDRM') IS RESPONSIBLE UNDER INTERNATIONAL LAW FOR THE CONDUCT OF THE MERIDIONESE LIBERATION ARMY (HEREINAFTER 'MLA') WITH RESPECT TO THE SCHOOL INCIDENT IN CENTRAL PROVINCE AND THE HOSPITAL INCIDENT IN SOUTHEAST PROVINCE.

generally these are too long. Keep your hereinafters in the text.

A. All Acts of the MLA are attributable to the PDRM under the customary international law on state responsibility.

The act of an insurrectional movement which becomes the new government of a state shall be considered an act of that state.¹ The insurrectional movement is deemed to be the agent of the new government with respect to the acts of the movement during a civil war. *but the new govt did not exist then...*

why? by whom?
by whom?

The MLA is the insurrectional movement whose actions resulted in the PDRM forming the new government of the state of Meridion. Thus the PDRM must be attributed with responsibility for all the internationally wrongful acts of the MLA at the school incident in Central Province and the hospital incident in Southeast Province which were in breach of the PDRM's international obligations.

B. During the hostilities, all individuals were protected by the Geneva Conventions of 1949² (hereinafter 'Geneva Conventions'). Nationals of Septentrion were also protected by the customary international law relating to the treatment of aliens.

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1. See Art. 15 of the Int'l Law Commission's Draft Articles on State Responsibility, [1975] 2 Y.B. INT'L COMM'N 99, U.N. Doc. No. A/CN. 4/Ser. A/ 1975/Add 1. It is a codification of existing principles on state responsibility.
 2. Geneva Convention Relative to the Treatment of Prisoners of War, 75 U.N.T.S. 35; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287; Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the field, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Armed Forces at Sea, 75 U.N.T.S. 85.

1. Common Article 3 (hereinafter 'Art. 3') is applicable as the hostilities amounted to an "armed conflict not of an international character."³

Art. 3 alone is applicable because the ^(inter) general provisions of the Geneva Conventions apply only where an international armed conflict arises between two or more states parties to these Conventions.⁴ Art. 3 becomes operative ^{inter alia} when there are two contending political factions within a State, one of them the established

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3. Art. 3 states inter alia:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the abovementioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

4. Common Art. 2 of the Geneva Conventions states that the Conventions "shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties."

government, fighting for control.⁵ The objective of the conflict must be public good and not private gain, and each faction must be in control of some territory.⁶ Art. 3 applies to grant rights and impose obligations on each party to a conflict in any state which is a contracting party.⁷ Art. 3 ~~comes~~ ^{came} into operation in, at the latest, 1976 when the MLA gained control of Southeast Province. The forces of both the MLA and of the Republic of Meridion (hereinafter 'ROM') were bound by it.

which side?
for art 3 to apply?

even non-states?

came

By what reasoning was the MLA bound? Did it sign or consent?

Moreover Art. 3 embodies those humanitarian principles which had already received acceptance by the civilised nations of the world.⁸ It has evolved into customary international law⁹ and

evidence from state practice?

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5. Art. 3 ^K contains a broader field of application than Protocol II of the Protocols Additional to the Geneva Conventions of 1949. See Borrowdale, The Future of the Law of War: The Place of the Additional Protocols of 1977 in Customary International Law, 15 COMP. INT'L L.J. OF S'THERN AFRICA 81 (1981) at 93.
 6. Levie, When Battle Rages, How can Law Protect, Working Paper and Proceedings of the 14th Hammarskjold Forum (1971) at 72.
 7. Cassese, The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflicts, 30 INT'L COMP. L.Q. 416 (1981) at 422; Levie, Mal-treatment of Prisoners of War in Vietnam, B.U.L. REV. 323 (1969) at 334; Hooker and Savasten, The Geneva Convention of 1949: Application in the Vietnamese Conflict, 5-6 VIRG. J. INT'L L. 243 (1964-66) at 249; Forsythe, Legal Management of Internal War 72 AM. J. INT'L L. 272 (1978) at 291. Santiago, Humanitarian Law in Armed Conflicts: Protocols I and II of the 1949 Geneva Conventions, 54 PHILIPPINE L.J. 188 (1979) at 211.
 8. J. PICTET, COMMENTARY ON THE GENEVA CONVENTIONS RELATIVE TO THE TREATMENT OF PRISONERS OF WAR (1966) 34; Smith, The Geneva Prisoner of War Convention: An Appraisal, 42 N.Y.U.L. REV. 880 (1967) at 883; Levie, supra note 7 at 336.
 9. As of 1st January 1979, there were 140 parties to the 4 Geneva Conventions. See Baxter, Humanitarian Law or Humanitarian Politics: The 1974 Diplomatic Conference on Humanitarian Law, 16 HARV. INT'L L.J. 1 (1975) who declares that it is "only of academic interest to consider whether the conventions have passed into customary international law."

why? then why do you make the claim?

constitutes a fundamental charter that enshrines the essential guarantees to which every individual is entitled.¹⁰ It therefore would be applicable to protect individuals during the conflict even if Meridion were not a party to the Geneva Conventions.

2. In particular, all nationals of Septentrion were also protected during the hostilities by the customary international law on treatment of aliens. 2

State practice¹¹ *— ite examples.* has established the existence of an international minimum standard regarding the treatment of aliens to which all states are required to conform. International responsibility may not be avoided merely by showing that an alien has been treated ^K on parity with nationals.¹² The treatment of aliens in internal armed conflicts can be no lower than the standard in Art. 3.

C. The PDRM is responsible for the acts of the MLA at the school incident in Central Province which were in breach of international law.

1. The treatment of the Septentrionese nationals amounted to torture.

The prohibition against torture is so firmly rooted that any government using torture as a means of combating its enemies is in

10. Cassese, supra note 7 at 432.

11. See 2 D.P. generally 1 L. OPPENHEIM, INTERNATIONAL LAW (1937) 283; O'CONNELL, INTERNATIONAL LAW, (2d ed. 1970) 941; A.V. FREEMAN, INTERNATIONAL RESPONSIBILITY OF STATES FOR DENIAL OF JUSTICE (1970) 501.

12. Neer Claim, 4 R. INT'L ARB. AWARDS 60; Roberts Claim, 4 R. INT'L ARB. AWARDS 77; Chevreau Claim, 2 R. INT'L AWARDS 1113; Salem Case, 2 R. INT'L ARB. AWARDS 1161.

clear violation of international law.¹³ Torture includes ^{why?} (14) an act, intentionally done, which inflicts severe pain or suffering, physical or mental, on a person by or at the instigation of a person acting in an official capacity, to obtain information. — *only for that reason?*

The evidence indicates that one prisoner died while in custody of a MLA division of injuries resulting from electric shock. There can be only one inference from these facts - the death was a result of torture. In addition, the severe beating which was inflicted by uniformed militia in order to extract the ensuing confession (which must have been forthcoming on account of the severe pain) falls within the definition of torture.

2. The People's Court, convened during the hostilities, conducted itself in derogation of the internationally guaranteed right to a fair trial.

Art. 3 prescribes that trials must be held before a "regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples." This right has been made more explicit by the 1977 Protocol Additional to the Geneva Conventions of 1949 (hereinafter Protocol II).¹⁵ It is also included

is this relevant? did it apply?

13. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Resolution 3452 (xxx) Dec. 9, 1975. The United Nations Human Rights Commission is now drafting a Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. Suppl. No. 34 (A/10034); G.A. Resolutions 217A (III) G.A.O.R. 3rd Sess., Part 1, Resolutions p. 17. See also Article 5 of the American Convention on Human Rights, reproduced in 9 INT'L LEGAL MATERIALS 273 (1970); Article 7 of the 1966 International Covenant on Civil and Political Rights G.A. Res. 2700, 21 U.N. G.A.O.R. Suppl. (No. 16) 49 U.N. Doc. A/3616 (1966); Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, U.K.T.S. 70 (1950), Cmnd. 8969.

14. G.A. Resolution 3452 (xxx), supra, note 13.

15. 1977 Protocol II of the Protocols Additional to the Geneva Conventions of 1949, reprinted in 16 INT'L LEGAL MATERIALS, 1391 (1977).

Pol Cor.

in the 1966 International Covenant on Civil and Political Rights (hereinafter the 1966 Political Covenant).¹⁶ *can I enforce this?*

The relevant articles in these conventions, which have become customary international law, dictate that a criminal defendant has the following minimum guarantees for a fair trial:¹⁷

- (1) he shall not be convicted of any offence in disregard of the time-honoured principle nullem crimen sine lege, nulla poena sine lege;¹⁸
- (2) he is entitled to a fair trial before a regularly constituted court;¹⁹
- (3) he must be enabled to defend himself with the aid of counsel of his choice;²⁰ and
- (4) he is entitled to be heard in his own defence.²¹

16. 1966 International Covenant on Civil and Political Rights, G.A. Res. 2700, 21 U.N. G.A.O.R. Suppl. (No. 16) 49 U.N. Doc. A/3616 (1966).

17. Arts. 10 and 11, G.A. Resolution 217A(III), supra, note 13; American Declaration of the Rights and Duties of Man, OAS, OR, OEA/Ser. L/V/E. 23. Doc. 21 Rev. 2 (1948); 1966 International Covenant on Civil and Political Rights, supra, note 13; European Convention on Human Rights and Fundamental Freedoms 1950, supra, note 13; Charters of the Nuremberg Tribunal reprinted in 35 AM. J. INT'L. 257 (1945); NATO Status of Forces Agreement, 1951, T.I.A.S. 2846; Orfield, What Constitutes Fair Criminal Procedure, U. PITT. L. REV. 35 (1950); Bond, Protection of Non-Combatants in Guerilla Wars, 12 WM. MARY L. REV. 787 (1971) at 802-3; Harris, The Right to a Fair Trial in Criminal Proceedings as a Human Right 16 I.C.L.A. 352 (1967).

18. Art. 15 of the 1966 Political Covenant; see also Art. 6 (2)(c) of Protocol II.

19. Art. 14 of the 1966 Political Covenant; Art. 6 of Protocol II.

20. Art. 14(2)(d) of the 1966 Political Covenant.

21. Art. 14(2)(d) of the 1966 Political Covenant; Art. 6(2)(a) of Protocol II.

The MLA has deprived the Septentrionese nationals of these rights as evidenced in the following instances.

First, the convictions were contrary to international law as the acts of the accused did not constitute criminal offences under the law of Central Province when they were committed. This is because Decree No. 181, when issued, extended to Southeast Province only.

Secondly, the accused were not tried by a regularly constituted court. The MLA, as an insurgent force, has no authority to convene courts in Central Province and as such [?] it cannot try its captives according to the standards of a regularly constituted ccourt. This is because Central Province, unlike Southeast Province, was not a territory over which the MLA was the de facto authority.²² Furthermore inadequate procedural guarantees were granted to the accused as they were not accorded the right to be represented by counsel nor were they permitted to testify on their own behalf.

D. The PDERM is responsible for the MLA attack on the hospital in Southeast Province which was in violation of international law.

1. The detention of the ~~medical~~ medical personnel incommunicado was in breach of the right of all individuals to be treated humanely, to be protected and to have a right of access to counsel.

Art. 3 prescribes that all individuals taking no active part in the hostilities shall in all circumstances be treated humanely. This is further embodied in Art. 4 of Protocol II²³ which represents

22. Hooker and Savasten, supra note 7 at 235; Kelly, Legal Aspects of Military Operations in Counter-insurgency 21 MIL. L. REV. 95 (1963) at 117.

23. Art. 4(1) ^{meaning?} of Protocol II states "All persons who do not take a direct part in hostilities ... whether or not their liberty has been restricted, are entitled to respect for their person ... They shall in all circumstances be treated humanely ..."

evidence? author?

customary international law. This right is violated when detainees are held incommunicado and denied the right to receive family visitors.²⁴

Furthermore, the detention of such medical personnel contravenes what authority? the principle that all such personnel shall be respected and protected in all circumstances. This rule is contained in the general provisions of the Geneva Conventions relating to applicable? international armed conflict.²⁵ It should, as a matter of policy, also apply to armed conflicts not of an international character. *why?* This has been recognised in Art. 9 of Protocol II which makes this rule applicable to internal conflicts.²⁶

In addition, all the Septentrionese nationals held incommunicado were denied the right to communicate with representatives of the Septentrionese government.²⁷ The right of access to detainees is an adjunct of the right of states to protect their nationals, when abroad, from injustice.²⁸

2. The massacre of the thirty-five patients was a gross violation of international law.

Murder of the wounded is absolutely prohibited by Art. 3. This

24. De Bazzano v Uruguay, 59 INT'L L.R. 435. *court? date?*

25. Art. 24 of the 1949 Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field, supra, note 2.

26. Art. 9 of Protocol II states "Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties".

27. Chevreau Claim, supra, note 12; Faulkner Claim, 4 R. INT'L ARB. AWARDS 67; Art. 12 of the Draft Convention on Jurisdiction with respect to Crime, prepared by the Harvard Law School Research Team in International Law reproduced in 29 AM. J. Int'L L. 437 (1935) at 600; see generally A.V. FREEMAN, supra, note 11 at 207.

28. See Stowell, The Robinson Case, 32 AM. J. INT'L 324 (1938); Pope Case, 8 Whiteman, 709.

rule is merely an embodiment of the fundamental minimum guarantees that all individuals are entitled to under international law.²⁹ There exists a consensus that certain rights are so basic and fundamental that no derogation from them will be allowed in any circumstances whatsoever.³⁰ The right to be protected from violence to life and person is the single most important of such rights. The massacre of the patients in the hospital by MLA forces was a gross violation of this right by persons whose conduct must be imputable to the PDRM. *do we know this? why?*

E. The PDRM is liable to make reparations for the damage caused to Septentrion and is under an obligation to repatriate all BIS prisoners to Septentrion.

1. Septentrion is entitled to an award of compensatory damages. *what is this? what authority does it have?*

Under the theory of state responsibility Septentrion is in reality asserting its own right to ensure respect for the rules of international law.³¹ The damage suffered by its nationals and their families provides a convenient scale for the computation of the reparation due to Septentrion.³² The measure of damages in this case would be based on the actual injuries caused.³³ For fatal injuries, the calculation is based upon the financial loss and degree of suffering of the dependents.³⁴ Where the injury is non-fatal, the

29. Supra notes 13 and 17.

30. See Art. 4 of the Political Covenant supra note 13. See also McDougall, Human Rights and World Public Order, 14 VIR. J. INT'L L. 387 (1974) at 390.

31. Mavrommatis Case, [1927], D.C.I.J. Ser. A, No. 2 at 12.

32. Id. See also D.W. GREIG, INTERNATIONAL LAW (2d. ed. 1976) at 596.

33. Corfu Channel Case, [1949] I.C.J. Rep. 244.

34. Chorzow Factory Case, [1928] D.C.I.J. Ser. A, No. 17 at 47.

compensation must be awarded on the basis of the degree of disablement, medical expenses, loss of earnings and the deprivation of personal companionship.³⁵

2. **The PDRM is under a legal obligation to repatriate all BIS prisoners.**

In view of the continuing illegal detention incommunicado of all BIS prisoners, the PDRM is under an international obligation to repatriate them to Septentrion. *including those convicted & sentenced?*

II. THE PDRM IS RESPONSIBLE UNDER INTERNATIONAL LAW FOR THE WRONGFUL TREATMENT OF THE SENIOR SEPTENTRIONESE BIS OFFICIALS AT AND AFTER THE TRIAL BEFORE THE PEOPLE'S REVOLUTIONARY COURT.

- A. **The PDRM is responsible for the wrongful acts of its organ, the People's Revolutionary Court.**

A state is responsible under international law for all the wrongful acts of its organs.³⁶ The People's Revolutionary Court was established by the new government in *June?* September 1977 - after it had taken control of the whole country. Thus, its acts must be attributed to the PDRM.

- B. **After the cessation of hostilities, all individuals were protected by the international law of human rights and the nationals of Septentrion were protected by the customary international law on treatment of aliens.**

1. **The PDRM is under an international obligation to abide by the rules on fair trials as embodied in the 1966 Political Covenant, the 1948 Universal Declaration of Human Rights (hereinafter "Universal Declaration")³⁷ and customary international law.**

35. Id.

36. See Art. 5 of the Int'l Law Commission's Draft Articles on State Responsibility, [1975] 2 Y.B. INT'L L. COMM'N 60 U.N. Doc. No. A/CN/Ser. A/1975/Add. 1. It is a codification of existing principles.

37. G.A. Resolution 217A(III), supra note 13.

The PDRM (as successor to the ROM) is a party to the 1966 Political Covenant and as such is bound vis-a-vis the other members of the United Nations (hereinafter 'U.N.') as a whole to observe and promote its obligations under the covenant. The 1966 Political Covenant creates obligations erga omnes and is designed to protect individuals.³⁸ *Can I enforce this?*

Furthermore, the PDRM has an international obligation under the U.N. Charter³⁹ to respect human rights.⁴⁰ *is that what the Charter says?* These rights have been subsequently interpreted by the 1948 Universal Declaration of Human Rights⁴¹ which is binding upon members of the U.N. to the same extent as the U.N. Charter itself is binding.⁴² *has much is that?*

In addition, the relevant provisions in the U.N. Charter, Universal Declaration and the 1966 Political Covenant have become customary international law.⁴³ *you must argue for this; it is not self-evident.*

38. Barcelona Traction, Light and Power Company, Limited, Judgment [1970] I.C.J. Reg. 3; see also Hoof, The Protection of Human Rights and the Impact of Emergency Situations under International Law with Special Reference to the Present Situation in Chile, 10 HUMAN RIGHTS, J. 213 (1977) at 233.

39. Charter of the United Nations, 59 Stat. 1031 (1945) T.S. No. 993.

40. Preamble to the United Nations Charter, Art. 1, para. (3), 55 and 56. *) K.*

41. G.A. Resolution 217A, supra, note 13. See also Art. 31(3) of the 1969 Vienna Convention on the Law of Treaties, reprinted in 63 AM. J. INT'L L. 875 (1969).

42. M. BOS, THE PRESENT STATE OF INTERNATIONAL LAW (1973) 54.

43. See G.A. Resolution 217A, supra, note 13; Declaration on the granting of Independence to Colonial Countries and Peoples, G.A. Resolution 1514 (XVIII) Nov. 20, 1963, reprinted in 3 INT'L LEGAL MATERIALS 164 (1964); The Proclamation of Tehran, unanimously proclaimed by the International Conference on Human Rights at Tehran May 13, 1968, (convened pursuant to G.A. Resolution 2081 (XX) Dec. 18, 1967; Final Act of the International Conference on Human Rights: A Compilation of International Instruments of the United Nations (1973) ST/HR/1; G.A. Resolution 3452 (XX), supra, note 13; Declaration of Principles of International Law

Consequently, Septentrion has a right, as a U.N. member, to seek a declaration with respect to any breach by the PDRM of its obligations under the 1966 Covenant, U.N. Charter or customary international law and in addition seek damages for any breach which affects its own nationals.

has the entire Cov become customary law?
to
every word?
only?

2. In addition, the international law on treatment of aliens dictates that the trial and punishment of the Septentrionese must conform to the standards set by Arts. 7, 14 and 15 of the 1966 Political Covenant.

The treatment of aliens must be in accordance with the international minimum standard during time of peace. The standards for trial and punishment are set out in Arts. 7, 14 and 15 of the 1966 Political Covenant.

- C. The trial and punishment of the Senior Septentrionese BIS officials by the People's Revolutionary Court after the termination of hostilities was in violation of the international obligations of the PDRM under Arts. 7, 14 and 15⁴⁴ of the 1966 Political Covenant.

1. Art. 4 of the 1966 Political Covenant, permitting certain derogations in times of emergency, is not applicable because there was no threat to the life of the nation and the notification required under the Covenant was not given.

Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations 1970, G.A. Resolution 2625 (XXV) in 9 INT'L LEGAL MATERIALS 1292 (1970).

44. Art. 7 of the 1966 Political Covenant states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." Art. 14(3) states "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees in full equality: (b) To have adequate times and facilities for the preparation of his defence and to communicate with counsel of his own choosing - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination witnesses on his behalf under the same conditions as witnesses against him." Art. 15(1) states "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed.

Cite language of Art. 4.

A public emergency is an exceptional situation of crisis which affects the whole population and constitutes a threat to the organised life of the community.⁴⁵ The question whether such a threat exists is an objective one and does not depend on the state's subjective view of the situation.⁴⁶ There was, on the evidence, no such threat either before or after the new government had taken control.

In addition, the PDRM did not notify the Secretary-General of the U.N. of the purported emergency as required by Art. 4(3) of the 1966 Political Covenant.⁴⁷

2. **There was a failure to observe the fundamental principle *nullem crimen sine lege, nulla poena sine lege* embodied in Art. 15.**

This principle is so firmly rooted that it has been recognised as one of the few principles that are immune from derogation even in times of emergency.⁴⁸ Decree No. 181 was only applicable in Southeast Province but there was no evidence that all the senior BIS officials accused of its contravention were from that province. Thus the conviction of all the accused based on a breach of this decree was in violation of international law.

Good.

45. Lawless v Ireland, Application No. 332/57, 2 Y.B. EUR. CONV. 308 (1958/9). A comparison between the 1966 Political Covenant and the European Convention is justified because the object and the *raison d'etre* of both treaties is identical; and the derogation clauses of both treaties are similar. See Hoof, supra note 32 at 236.

46. Hoof, supra note 38 at 234.

47. Art. 4(3) states that "Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform ... the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated."

48. Art. 4(3) of the 1966 Political Covenant, supra, note 13; see also supra, notes 15 and 17.

Furthermore, the accused were charged with, and convicted for, having committed cultural genocide. "Genocide" is defined in the 1948 Convention on the Prevention of the Crime of Genocide⁴⁹ which is customary international law. The concept of "cultural genocide" is not included in this exhaustive definition. There can be no commission of the international crime of genocide unless the act falls within this definition. In addition, there is no evidence that the municipal law of Meridion had made "cultural genocide" an offence. Since there has been a conviction for a non-existent offence, the principle embodied in Art. 15 was violated.

but can there not be a municipal crime of cultural genocide?

3. The procedural requirements of a fair trial listed in Art. 14 were not respected.

Art. 14 embodies certain concepts that have been universally acknowledged as fundamental rules of international law relating to fair trials. First, all evidence prejudicing the accused must be produced under oath and made subject to oral examination,⁵⁰ and secondly, the accused must be aided by counsel of his own choosing.⁵¹

At the trial before the People's Revolutionary Court, certain witnesses were not produced or made subject to cross-examination and the accused were not accorded the right to legal assistance of their own choosing.

4. The punishment of the aged Septentrionese officials constituted cruel and inhuman treatment contrary to rule in Art. 7.

49. 78 U.N.T.S. 278, Art. II states that "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b)--Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of one group to another group.

50. Supra, note 17.

51. Id.

International law dictates that no one shall be subjected to cruel or inhuman treatment or punishment.⁵² In this case, the accused, some of whom were sixty five years and above, were sentenced to ten to thirty years of hard labour. This was not only a violation of this principle but was in complete disregard of the elementary dictates of humanity. *are they enforceable?*

D. The PDRM is liable under international law to make reparation for the damage caused to Septentrion and to repatriate all BIS prisoners to Septentrion.

1. The failure of the PDRM to raise the question of the exhaustion of local remedies as a preliminary objection and the manifest lack of justice in Meridion makes this principle inapplicable to this dispute

It is only possible to invoke, and for the Court to consider, failure to exhaust local remedies as a preliminary objection.⁵³ As the PDRM has failed to do this, it therefore cannot rely on that contention now.

Further more, a claimant in a foreign state is not required to exhaust justice where there is no justice to exhaust.⁵⁴ Revolutionary Order No. 1 is couched in such strong 'anti-Septention' language that the possibility of obtaining a remedy at the municipal level was non-existent. *would S (as opposed to the) have had grounds in my view?*

2. Septentrion is entitled to an award of compensatory damages and the PDRM is under a legal obligation to repatriate all BIS prisoners.

For arguments on these points, please see (supra IE). *then by report?*

52. Id.

53. (1977) 2 Y.B. INT'L L. COMM'N U.N. Doc. No. a/CN. 4/Ser. A/1977/Add. 1 p. 20; Administration of the Prince von Pless, P.C.I.J. Ser. C, No. 70, p. 134; Phosphates in Morocco Case, P.C.I.J. Ser. A/B, No. 74, p. 15; Barcelona Traction, Light and Power Company, Limited (preliminary objections), [1964] I.C.J. Rep. 114; see also O'CONNELL, supra, note 11 at p. 1053.

54. Id. also Panevezys-Saldutiskis Railway Case, P.C.I.J. Ser. A/B, No. 76, p. 47.

III. THE PDRM IS RESPONSIBLE UNDER INTERNATIONAL LAW FOR CAUSING THE MASS MIGRATION OF PEOPLE FROM MERIDION TO SEPTENTRION AND FOR THE RESULTING DAMAGE.

A. Every state has an obligation not to cause damage to another state.

Every state is under an international obligation to respect the territorial integrity and rights of other states.⁵⁵ Although international law recognises the sovereign rights of states within their own territory, these rights cannot be exercised in a manner which causes injury to another state.⁵⁶ As such, although the internal exercise of a state's sovereign rights is essentially a question of domestic concern, it assumes an international character if such exercise causes damage to other states. This rule has been applied in many areas of international law including the protection of the environment,⁵⁷ space law,⁵⁸ and damage consequent to a fall-out.⁵⁹

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55. See The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, supra note 43; D.W. GREIG, supra note 32 at 526-7; see also Island of Palmas Case 2 H.C.R. 84 (1928) at 93). *what etc?*
56. This is governed by the general principles of the doctrine of abuse of rights; see I. BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW (3d ed. 1979) 443-5.
57. See The Trail Smelter Arbitration, 3 R. INT'L ARB. AWARDS 1905 (1941); Stockholm Declaration on The Human Environment, 11 INT'L L.M. 1416 (1972), Principle 21 which sets out that "states have, in accordance with the Charter of the United Nations and principles of international law . . . the responsibility to ensure activities within their jurisdiction or control do not cause damage to the environment of other states. . . ."
58. Art. 7, 1967 Treaty on Principles Governing The Activities of States In The Exploration And The Use Of Outer Space, Including the Moon and Other Celestial Bodies, 10 U.K.T.S. 3519. Art. 7 which states "Each state . . . from whose territory the object is launched is internationally liable for damage to another state", is a codification of the rule of customary international law that crystallised from the General Assembly Resolutions 1721 (XVI), 1884 (XVIII) and 1962 (XVIII).
59. See Nuclear Test Cases [1974] I.C.J. Rep. 253 at 457; Arguilo, Chinese Nuclear Test and Transnational Radioactive Pollution, 3 ASILS INT'L L.J. 63 (1979) at 66.

B. Meridion has breached its international obligations by causing the mass migration of people from Meridion to Septentrion.

1. Acts of the MLA as well as the ROM are attributable to the PDRM.

During a period of revolution it may happen that the acts of two different entities are imputable to the state.⁶⁰ First, the acts of the successful revolutionaries are imputable to the new government.⁶¹ Secondly, the obligations of the de jure government at the time of the revolution are also generally succeeded to by the new government.⁶² The principle is that the liability of the state remains although the governments may change.⁶³

*in all cases?
all obligs?*

The PDRM is therefore responsible to other states for breaches of international obligations created by the hostilities between the MLA and ROM, as it is now the representative government of the state of Meridion.

2. Meridion, by causing the mass migration of people to Septentrion is responsible for the costs of housing and feeding the Meridionese persons.

- (a) Meridion is responsible for the mass migration of people from Meridion to Septentrion.

It is an accepted principle of international law that a state is responsible for the conduct of activities in its territory which are carried out in such a manner as to cause damage to other states.⁶⁴ The

60. B. CHENG, GENERAL PRINCIPLES OF INTERNATIONAL LAW, (1953) 190.

61. See Part IA.

62. Arguilar-Amory and Royal Bank of Canada (Tinoco) Case 2 U.N.R. INT'L ARB. AWARDS 364 (1923) at 377.

63. Garrison Case 3 INT'L ARB. 3548 at 3552 Baxter Case 3 INT'L ARB. at 2934, "The State is the same, although the form of government is changed."

64. The Trail Smelter Arbitration, supra note 57 at 1965 ". . . no State has the right to use or permit the use of its territory in such a manner as to cause injury . . . to the territory of another. . . when the case is of a serious consequence and the injury is established by clear and convincing evidence"; see also C. EAGLETON, RESPONSIBILITY OF STATES IN INTERNATIONAL LAW (1928)

mass influx of persons from Meridion to Septentrion was due to the conduct of hostilities between the MLA and the ROM forces. As the hostilities progressed many deaths and injuries were reported. In the circumstances, the Meridionese persons were compelled to leave Meridion as their lives were in jeopardy. ^{all?} The PDRM which represents the State of Meridion is therefore responsible for causing the mass migration of persons.

(b) Septentrion is entitled to damages sustained through the housing and feeding of the Meridionese persons.

While a state may not be responsible for the fact that a revolution breaks out in its territory, this principle is only applicable to damage caused within its territory.⁶⁵ However Meridion is responsible for all damage caused to Septentrion ensuing from its breach of international law through the migration of persons.⁶⁶ The costs of housing and feeding the Meridionese persons were an inevitable consequence of the breach. Septentrion is therefore entitled to recover the costs of housing and feeding the Meridionese persons from the PDRM. } K

IV. SEPTENTRION'S ACTIONS IN DETAINING MERIDIONESE PERSONS AND IN DECLINING TO RESETTLE ~~THESE PERSONS WERE~~ IN CONFORMITY WITH ITS INTERNATIONAL OBLIGATIONS. ^{THC di}

A The detention of the Meridionese persons was consistent with international law.

80 "A state owes at all times a duty to protect other states against injurious acts by individuals from within its jurisdiction."; Jennings, Some International Law Aspects of the Refugee Question, 20 BRIT. Y.B. INT'L L. 98 (1939) at 110; Nawaz, Bangla Desh and International Law, 11 INDIAN J. INT'L L. 251 (1971) at 265.

65. Cf Spanish Zone of Morocco Claim, 2 U.N.R. INT'L ARB. AWARDS 615 (1924) at 642.

66. Chorzow Factory (Indemnity), supra note 34 at 29. "... it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation."

1. Art. 9 and 31(2) of the 1951 Convention Relating to the Status of Refugees (hereinafter referred to as the 1951 Convention) authorises a party to adopt provisional measures with respect to the detention of persons.

- (a) The 1951 Convention applies by virtue of Art. I(1) of the 1967 Protocol Relating to the Status of Refugees (hereinafter the 1967 Protocol).

Both states to this dispute are parties to the 1967 Protocol.⁶⁷

By virtue of Article I(1) of this Protocol, Arts. 2-34 of the 1951 Convention ⁶⁸ are binding on both states. *but are the detainees refugees?*

- (b) Art. 9 of the 1951 Convention allows a contracting state to impose on aliens seeking refugee status such provisional measures as detention in temporary resettlement camps in times of grave and exceptional circumstances.

The sovereign right of every state to take such necessary measures for the safety of its community when its national security is threatened, is preserved in Art. 9 of the 1951 Convention. in the event of war or other grave and exceptional circumstances, Art. 9 permits a contracting state to take necessary measures with respect to persons seeking refugee status in order to safeguard its national security. These measures are only subject to the limitations that they are provisional and must be taken in good faith.⁶⁹

Septentrion was justified in taking measures under Art. 9 in detaining the Meridionese persons seeking refugee status. First, the massive and sudden influx of Meridionese persons which posed a serious threat to the stability of Septentrion was a 'grave and exceptional circumstance' within the meaning of Art. 9. The potential chaos that would have been created in allowing the Meridionese persons freedom of movement cannot be underemphasised bearing in mind the land area and population of Septentrion. Secondly, the detention was also necessary

67. 606 U.N.T.S. 267.

68. 189 U.N.T.S. 137.

69. See N. ROBINSON, CONVENTION RELATING TO THE STATUS OF REFUGEES: ITS HISTORY, CONTENTS AND INTERPRETATION (1953) 95.

for the purpose of screening the Meridionese. Such an action is justifiable to screen out spies and other bad elements that might have undermined the security of Septentrion.⁷⁰ Thirdly, these measures were in any event temporary. Septentrion's good faith is demonstrated by the fact that it allowed those who had skills or relatives in Septentrion to leave the camps.

I don't see the relevance of that!

(c) Even if some of these Meridionese persons were in fact refugees, Septentrion was justified in detaining them under Art. 31(2) of the 1951 Convention.

Art. 31(2)⁷¹ of the 1951 Convention empowers a contracting state to impose necessary restrictions on refugees unlawfully present until their status is regularised. The Meridionese were unlawfully present in Septentrion as they did not have the necessary travelling documents. Their provisional detention was necessary to safeguard the national security of Septentrion. Arguments for this assertion have been canvassed in the preceding paragraph (b).

but were they?

how do you know the detention is temporary?

2. In any event, the detention of the Meridionese persons was permissible under the doctrine of self-preservation.

Whenever the safety, security or integrity of a state is threatened by what ever cause, the threatened state has an inherent sovereign right to take the requisite measures in its territory to ensure the safety of its community.⁷² International obligations whether created by treaties or otherwise are not to be interpreted as limiting this right.⁷³

70. Id.

71. The relevant language of Art. 31(2) reads, "The Contracting States shall not apply to the movements of such refugees [who are unlawfully present in the territory] restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised. . . ."

72. B. CHENG, supra note 53 at 51; I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES (1963) 298-300.

73. The S.S. Wimbledon Case [1923] P.C.I.J. Ser. A No. 1, D.O. by Judges Anzilotti and Huber at 36.

The mass influx of the Meridionese persons posed a grave and serious threat to the welfare, security and economy of Septentrion. Septentrion was therefore justified in detaining these persons temporarily to preserve the safety of its community notwithstanding any other obligations under treaty or otherwise.⁷⁴

3. Septentrion was not in breach of international law by not providing for legal services or judicial remedies.

The 1967 Protocol does not impose any obligation on Septentrion to provide for legal services or judicial remedies.⁷⁵ Neither does international law require states to furnish legal services as distinct from access to courts to aliens.⁷⁶ *this distinction is unclear.* Further it cannot be said that any international obligation has been violated by the failure to give judicial or administrative remedies.⁷⁷ International law only requires that access to courts be granted to aliens. There is no evidence that this right has been denied to the Meridionese.

B. Septentrion's action in declining to resettle the Meridionese into Septentrionese society was consistent with international law.

Art. 34 of the 1951 Convention in urging contracting states to expedite as far as possible the settlement of refugees within their territories recognises the customary international rule that the grant of asylum is the prerogative and sovereign right of all states which is to be exercised at their sole discretion.⁷⁸ There being no positive

74. Oscar Chinn Case [1934] P.C.I.J. Ser. A/B No. 63, S.O. of Judge Anzilotti, at 113. "Necessity may excuse the non-observance of international obligations"; see U.S. practice in similar situations in "Refugees or Prisoners", Newsweek, Feb. 1 (1982) at 26.

75. Art. 16(1) of the 1951 Convention only requires states to provide for access to courts.

76. A.V. FREEMAN, supra note 11, 213-222.

77. Id.

78. See Khan, Legal Problems Relating to Refugees and Displaced Persons, 149 RECUEIL DES COURS 287 (1976) at 317; Weis, The Draft United Nations Convention on Territorial Asylum, BRIT. Y.B. INT'L L. 151 (1979) at 152; Pugash, The Dilemma of the Sea Refugee: Rescue Without Refuge, 18 HARV. J. INT'L L. 577 (1977) at 591.

obligation to resettle, Septentrion's refusal to do so was justified under international law.

V. SEPTENTRION'S ACTION IN RETURNING PERSONS ON THE HIGH SEAS TO MERIDION WAS CONSISTENT WITH INTERNATIONAL LAW.

A. The principle of non-refoulement was not violated by the return of persons on the high seas.

1. The return of Meridionese persons did not violate Art. 33(1) of the 1951 Convention.

what is this?
The principle of non-refoulement embodied in Art. 33(1) prohibits a Contracting State from expelling or returning refugees to territories where they may suffer persecution. But subsequent consistent state practice shows that the relevant phrase "expel or return" implies that *evidence.* the refugee is already within the territory, not without.⁷⁹ Therefore the return of Meridionese persons intercepted on the high seas is outside the ambit of Art. 33 (1).

2. The return of Meridionese persons on the high seas did not violate Art. 3(1) of the 1967 Declaration⁸⁰ on Territorial Asylum (hereinafter 1967 Declaration).

The principle of non-refoulement has been extended by Art. 3(1) of the 1967 Declaration to prohibit states from rejecting refugees at the frontiers of their territory.⁸¹ However, the return of Meridionese intercepted on the high seas is also beyond the scope of this provision.

79. Report of the Ad Hoc Committee on Statelessness, 11 U.N. ESCOR Annex II, 61 U.N. Doc.; Group of Experts, 1975 Geneva Annex to U.N. Doc. A/10177, para. 8; 2 GRAHL-MADSEN, THE STATUS OF REFUGEES IN INTERNATIONAL LAW (1972) 94; Weis, The United Nations Declaration on Territorial Asylum, 7 CAN. Y.B. INT'L L. 92 (1969) at 124.

80. U.N. G.A.O.R. Off. Rec. 22nd Sess., Suppl. No. 16, at 81. This Declaration was adopted unanimously by the General Assembly.

81. The relevant language of Art. 3 reads: "the person . . . shall not be subjected to measures such as rejection at the frontier or if he has already entered the territory in which he seeks asylum, expulsion or compulsory return . . . where he may be subjected to persecution."

3. Alternatively, the principle of non-refoulement does not apply when there are overriding reasons of national security in the event of a mass influx of persons.

The exception to the principle of non-refoulement in the event of a mass influx of persons which threatens the national security of a state is an expression of the doctrine of self-preservation as previously canvassed in Part IV. This exception is evidenced by Art. 3(2) of the 1967 Declaration.⁸²

B. The interception of the Meridionese boats was not in violation of international law.

It is generally recognised that a state may exercise its authority on the high seas in circumstances where it is necessary to forestall a real threat to its territorial integrity and general security.⁸³ Considering the damage already sustained by Septentrion through the influx of Meridionese persons, it was necessary for Septentrion to curb ^{their} ~~the~~ further influx ~~of Meridionese persons~~. The measure of interception on the high seas was an act of necessity effected towards ^K this cause; it was neither excessive nor unreasonable. This is borne out by the fact that no unnecessary force was used. Further those persons in vessels which could not make the return journey to Meridion were [?] received by Septentrion's Coastal Service. Hence the interception on the high seas was permissible as a lawful exercise of the right of self-defence.

82. Art. 3(2) reads: "Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons."; A similar exception has also been incorporated in Art. 3(2) of the Draft United Nations Convention on Territorial Asylum.

83. D. BOWETT, SELF-DEFENCE IN INTERNATIONAL LAW (1955) 66; D.W. GREIG, supra note 32 at 338

CONCLUSION AND REQUEST FOR RELIEF

CONSIDERING THAT the PDRM is responsible under international law for the treatment of persons in Meridion during the incidents in question;

CONSIDERING THAT the PDRM is responsible under international law for damage caused to Septentrion by the migration of people from Meridion to Septentrion;

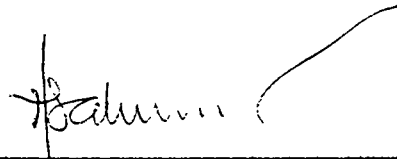
CONSIDERING THAT Septentrion's treatment of Meridionese persons was in accordance with its international legal obligations;

CONSIDERING THAT Septentrion's action in returning Meridionese persons to the PDRM was in conformity with international law;

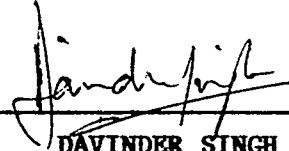
The Kingdom of Septentrion respectfully requests this Honourable Court to:

1. **DECLARE** that the PDRM is responsible under international law for the treatment of BIS personnel and the killing of patients in a BIS hospital in Meridion;
- 2, **DETERMINE** that Septentrion is entitled to an award of compensatory damages for injuries suffered by Septentrionese BIS personnel and their families.)
3. **DECLARE** that the PDRM shall immediately repatriate all Septentrionese BIS personnel illegally detained in Meridion.
4. **DECLARE** that the Meridion was in violation of international law in causing the mass migration of persons from Meridion to Septentrion.)
5. **DETERMINE** that the PDRM shall indemnify Septentrion for the costs of housing and feeding the Meridionese persons who migrated to Septentrion.)
6. **DECLARE** that the treatment of Meridionese persons by Septentrion was not in violation of its international legal obligations.)
7. **DECLARE** that the interception and return of Meridionese persons to the PDRM was not in violation of international law.

RESPECTFULLY SUBMITTED



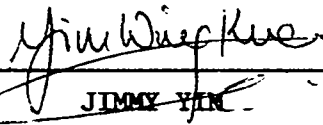
STEVEN CHONG



DAVINDER SINGH



RAJAH VIJAYA KUMAR

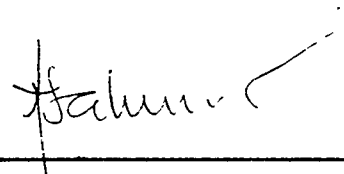


JIMMY YIN

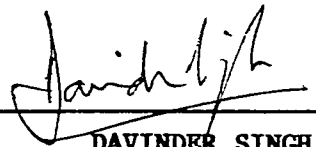
Very good.
(90)

C E R T I F I C A T E

We hereby certify that this Memorial complies with the OFFICIAL
RULES of this Competition.



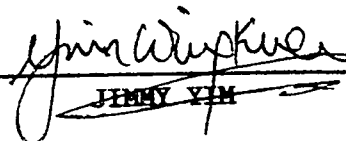
STEVEN CHONG



DAVINDER SINGH



RAJAH VIJAYA KUMAR



JIMMY YIN