

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

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MEMORIAL FOR THE RESPONDENT

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Team Number:

S. Chong  
D. Singh  
V.K. Rajah  
J. Yim

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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)	
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Charter of the United Nations, 59 Stat 1031 (1945) T.S. No. 993	
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1948 Universal Declaration on Human Rights G.A. Resolution 217A (III) G.A.O.R., 3rd Session, Part I Resolutions at 17	
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1966 International Covenant on Civil and Political Rights, G.A. Res. 2700, 21 U.N. G.A.O.R. Supp. (No. 16) 49 U.N. Doc. A/3616 (1966)	
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European Convention on Human Rights 1950, U.K.T.S. 70 (1950), Cmnd. 8969	
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2 D.P. O'CONNELL, INTERNATIONAL LAW (2d ed. 1970) ....	2
1 D.P. O'CONNELL, INTERNATIONAL LAW (2d ed. 1970) ....	5
J. PICTET, COMMENTARY ON THE GENEVA CONVENTIONS RELATIVE TO THE TREATMENT OF PRISONERS OF WAR (1960) .....	2, 6

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DRAPER, THE RED CROSS CONVENTIONS (1958) .....	3
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J. BOND, THE RULES OF RIOT (1974) .....	3, 4, 5, 7, 8, 9
I. BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW (3rd ed. 1979) .....	6, 11
D.W. GREIG, INTERNATIONAL LAW (2d ed. 1976) .....	6, 11
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J. STONE, LEGAL CONTROL OF INTERNATIONAL CONFLICTS (1959) .....	13
R. LEMKIN, AXIS RULE IN OCCUPIED EUROPE (1944) .....	13
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**CASES**

<u>Youman's Claim</u> , 4 R. INT'L ARB. AWARDS 110 (1926) ....	1
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<u>South-West Africa Cases</u> [1966] I.C.J. Rep. 4 .....	5
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<u>Filartiga v. Pena-Irala</u> , 630 F. 2d 876 (1980) .....	8

Corfu Channel Case [1949] I.C.J. Rep. 4 ..... 9

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Attorney-General of Israel v. Eichmann 36 INT'L  
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The S.S. Lotus Case [1927] P.C.I.J. Rep. Ser. A,  
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Panevezys-Saldutiskis Railway Case 1939 P.C.I.J.  
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The Barcelona Traction, Light and Power Co. Case  
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Ambatielos Arbitration, 12 R. INT'L ARB. AWARDS  
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Finnish Arbitration Case, 3 R. INT'L ARB. AWARDS  
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Alabama Arbitration Award, MOORE INT'L ARB. 495  
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**JOURNALS**

Farer, Humanitarian Law and Armed Conflicts:  
Towards the Definition of 'International  
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Yingling & Ginnane, The Geneva Convention of  
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Editorial Note: The Geneva Convention and  
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Cassese, <u>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
Forsythe, <u>Legal Management of Internal War</u> 72 AM. J. INT'L L. 272 (1978) .....	3, 5
Kilgore, <u>Law of War - Geneva Convention Signatories Clarify Applicability of Law of War to Internal Conflicts</u> , 8 GA. J. INT'L & COMP. L. 941 (1978) .....	4
Borrowdale, <u>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) .....	4, 7
Watson, <u>Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law</u> , 3 ILLINOIS L. F'NUM 609 (1979) .....	5
Starr, <u>International Protection of Human Rights and the United Nations' Covenants</u> [1967] WIS. L. REV. 863 (1967) .....	5
Kelly, <u>Legal Control of Population in Subversive Warfare</u> , VIRG. J. INT'L L. 174 (1964) .....	7
Santiago, <u>Humanitarian Law in Armed Conflicts: Protocols I and II of the 1949 Geneva Conventions</u> , 54 PHILIPPINE L.J. 188 (1979) .....	7
Harris, <u>The Right to a Fair Trial in Criminal Proceedings as a Human Right</u> , 16 INT'L COMP. L.Q. 352 (1967) .....	9, 10, 11, 12
Jennings, <u>Some International Law Aspects of the Refugee Question</u> , 2 BRIT. Y.B. INT'L L. 98 (1939) .....	15
Nawaz, <u>Bangla Desh and International Law</u> , 11 IND. J. INT'L L. 251 (1971) .....	15
Khan, <u>Legal Problems Relating to Refugees and Displaced Persons</u> , 149 RECUEIL DES COURS 287 (1976) .....	20
Weis, <u>The United Nations Declaration on Territorial Asylum</u> , 7 CAN. Y.B. INT'L L. 92 (1969).....	21
Pugash, <u>The Dilemma of the Sea Refugee: Rescue Without Refuge</u> , 18 HARV. J. INT'L L. 577 (1977) .....	21

Patrinogic and Santiago, Promotion, Dissemination  
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**MISCELLANEOUS**

Draft Articles on State Responsibility [1975] 2  
Y.B. INT'L L. COMM'N 99 U.N. Doc. No. A/CN.  
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[1973] 2 Y.B. INT'L L. COMM'N 179 et seq.  
U.N. Doc. No. A/CN. 4/Ser. A/1973/Add 1  
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[1977] 2 Y.B. INT'L L. COMM'N, Part One U.N.  
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Press Release of the U.S. State Department on the  
1948 Universal Declaration on Human Rights,  
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Ireland v. United Kingdom, Application 5310/71, 176  
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The Parker Report, U.K. Cmnd. No. 4901 (1972) Para.  
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Harvard Draft Convention on Responsibility of  
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U.N. G.A.O.R. Res. 96(1), Dec. 11 1946, 78  
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The Devil and the Deep Blue Sea, The Economist  
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## JURISDICTION

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.

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

New Hibernia, a colony of the Kingdom of Septentrion (hereinafter 'Septentrion') gained its independence in 1964, assuming the name of the Republic of Meridion (hereinafter 'ROM'). The Benefactors International Society, Ltd. (hereinafter 'BIS'), a society incorporated in Septentrion, had been operating in New Hibernia since 1902. Over the years there have been allegations of illegal political activity on the part of some of its Septentrionese ipersonnel. On the ROM gaining independence, all Septentrionese BIS personnel were issued with resident permits which prohibited them from participating in political activities. Violation of these permits was subject to punishment by imprisonment, followed by expulsion.

Since the ROM's independence, the Meridionese Liberation Army (hereinafter 'MLA') had hbeen waging a war of liberation to replace the government of the ROM. By 1976, the MLA was in control of Southeast Province. It issued, inter alia, Decree No. 181 requiring compliance from the BIS authorities in certain administrative matters. At a meeting of the top BIS management in Septentrion, it was resolved that the BIS would explicitly disregard most of the provisions of Decree No. 181.

### **(a) The Hospital Incident**

In September 1976 there were rumours that 35 ROM soldiers had been killed in a BIS hospital by 'persons wearing MLA uniforms'. These reports also accused the MLA forces of detaining 20 BIS personnel 'incommunicado'.

### **(b) The School Incident**

Early in 1977 in Polis, Central Province, the director of a BIS school was beaten by 'uniformed militia'. He subsequently

admitted that the school had been used as a hiding place for agents of the ROM. The director and three of his staff were subsequently tried and convicted by a People's Court for violating Decree No. 181. During the trial, the accused were not allowed to present evidence nor allowed to be represented by counsel. Three of them were executed, the fourth having died earlier in custody.

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

On June 19, 1977, the government of the ROM was replaced by a new government, the People's Democratic Republic of Meridion (hereinafter 'PDRM'), who immediately declared a national state of emergency.

During the emergency, the senior Septentrionese BIS personnel within the PDRM were charged on several counts of having conducted activities which were prejudicial to the people of Meridion. At the trial, the judge barred certain counsel selected by the accused on the grounds that they were security risks. Substitute counsel were appointed. The accused were permitted to cross-examine all oral witnesses but written statements of certain witnesses were not subject to cross-examination. The accused were convicted on all charges and sentenced to imprisonment. Timely appeals against the conviction were not lodged.

**(d) The Treatment of Meridionese Persons in Septentrion**

During the hostilities, some 40,000 people left Meridion for Septentrion. Of these 10,000 left by air and 30,000 by boat.

They arrived in Septentrion with no valid travel documents. In Septentrion these persons were segregated on the basis of their nationality. Non-Meridionese were permitted to proceed to their own countries while Meridionese were detained in resettlement camps.

The Meridionese persons were detained in cramped quarters and were not allowed any judicial remedies or access to legal services. In addition, the Septentrionese authorities refused to meet with the detainees' representatives to discuss the conditions of their detention, on the grounds that these persons were 'trouble-makers'.

**(e) The Forcible Return of Meridionese Persons**

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

**(f) Submission to the International Court of Justice**

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

**(g) 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.

Q U E S T I O N S P R E S E N T E D

1. Whether the treatment of BIS personnel of Septentrion as well as of Meridion citizenship, both by the Meridionese Liberation Army and by the People's Democratic Republic of Meridion was in violation of international law.
  
2. Whether the People's Democratic Republic of Meridion was in breach of its international legal obligations with regard to the migration of people from Meridion to Septentrion.
  
3. Whether the Kingdom of Septentrion was in breach of its obligations under the 1967 Protocol Relating to the Status of Refugees with regard to its treatment of Meridionese refugees
  
4. Whether the Kingdom of Septentrion's actions in intercepting on the high seas boats belonging to persons who had left Meridion and in forcibly returning these people to Meridion were in violation of international law.

## S U M M A R Y O F A R G U M E N T S

States and other international legal persons are generally only bound by those rules to which they have consented. While customary international law does indeed impose binding international obligations, often independent of any consent, it is contended that insofar as internal conflicts are concerned, few rules of customary international law exist. Incidents occurring during an internal conflict generally remain within a state's own domestic jurisdiction. Thus the treatment of a state's own nationals, during an internal conflict, cannot be subject to international law in the absence of binding treaty commitments. The treatment of aliens is however subject to a minimum standard laid down by international law. This standard is not absolute and in the context of an internal conflict limited derogations are permissible for the protection of the state's own security and integrity.

The People's Democratic Republic of Meridion (hereinafter 'PDRM') is only responsible for acts of the Meridionese Liberation Army (hereinafter 'MLA') which were in breach of international law at the time of commission. There were no binding treaty obligations to which the MLA had consented, nor any other rules of international law with which the MLA had to comply in its treatment of Meridionese nationals. With regard to the treatment of nationals of the Kingdom of Septentrion (hereinafter 'Septentrion'), it is contended that it was sufficient that the treatment was in accordance with Common Article 3 of the Geneva Conventions of 1949 (hereinafter 'Art. 3'). Art. 3 is relevant not as a treaty provision nor as a rule of customary international law but as a yardstick by which the treatment of an alien in an internal conflict is to be judged. At no time did the treatment of Septentrionese nationals fall below this standard.

The PDRM succeeded to the treaty obligations of the previous government on its accession to power. However, as Septentrion has not ratified the 1966 Covenant on Civil and Political Rights, compliance with the provisions of the Covenant is not justiciable as between the PDRM and Septentrion. The only rules governing the trial of the Septentrionese Benevolent International Society's personnel by the People's Revolutionary Court were those imposed by customary international law. The trial conformed with the standard required by customary international law, especially in light of an ongoing national emergency.

The PDRM is not responsible for the migration of persons from Meridion to Septentrion. First, it did not cause the migration. Secondly, international law does not recognise any principle obliging states to prevent their people from migrating. Indeed, international law encourages the free passage of people from their own state and seeks to inhibit states from imposing restrictions. Thirdly, no injury has been caused to Septentrion.

Both the PDRM and Septentrion are parties to the 1967 Protocol Relating to the Status of Refugees (hereinafter '1967 Protocol'). The PDRM is raising the issue of the treatment of Meridionese refugees in Septentrion because the PDRM has a legal interest in ensuring that the provisions of 1967 Protocol are observed by other contracting parties. Septentrion's actions in detaining the Meridionese refugees and in denying access to judicial remedies were in contravention of its obligations under the 1967 Protocol. Septentrion's municipal laws cannot be invoked to justify the measures they took in contravention of the 1967 Protocol.

Finally, Septentrion's action in forcibly returning to Meridion the persons who were still on the high seas was in violation of international law. The action was both an unjustifiable interference with the freedom of navigation on the high seas and a violation of the principle of non-refoulment.

## ARGUMENTS AND AUTHORITIES

**I. THE PEOPLE'S DEMOCRATIC REPUBLIC OF MERIDION (hereinafter 'PDRM') IS NOT RESPONSIBLE UNDER INTERNATIONAL LAW FOR THE TREATMENT OF PERSONS DURING THE 'HOSPITAL INCIDENT' IN SOUTHEAST PROVINCE OR THE 'SCHOOL INCIDENT' IN CENTRAL PROVINCE.**

**A. The PDRM is not responsible under international law for acts which were not committed, sanctioned or ratified by the Meridionese Liberation Army (hereinafter 'MLA') or the PDRM.**

Certain wrongful acts of a liberation movement which subsequently becomes the new government of a state may be retroactively considered as an act of that state.<sup>1</sup> The PDRM is therefore responsible under international law for acts of the MLA which were in violation of international law.

A state is only responsible for acts committed or sanctioned by its officials as well as for conduct which the state subsequently ratifies or adopts.<sup>2</sup> With regard to the conduct of troops, all acts committed by troops acting on the orders of officers are attributable to the state or army they represent.<sup>3</sup> Thus, only acts which were committed by the MLA troops under the command of the MLA officers, or acts which were otherwise sanctioned or ratified by the MLA can be attributed to the MLA and thereafter to the PDRM.

**B. The treatment of Meridionese nationals during the hostilities is solely a domestic matter not governed by international law.**

1. In the absence of binding treaty obligations, the treatment of nationals is a matter solely within a state's domestic jurisdiction.

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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 L. COMM'N 99, U.N. Doc. No. A/CN. 4/Ser. A/1975/Add 1. It is a codification of existing principles.
  2. See the commentary to Article 3 of the Int'l Law Commission's Draft Articles on State Responsibility, [1973] 2 Y.B. INT'L L. COMM'N, 179 et seq. U.N. Doc. No. A/CN. 4/Ser. A/1973/Add 1.
  3. Youman's Claim 4 R. INT'L ARB. AWARDS 110 (1926) at 116; see also 2 McNAIR, INTERNATIONAL LAW OPINIONS 255.

The treatment of nationals within a state's own territory is a matter solely within the domestic jurisdiction of the state.<sup>4</sup> Consequently, the treatment of Meridionese nationals within Meridion cannot be subject to international law in the absence of binding treaty obligations.<sup>5</sup>

2. The laws of war did not impose any obligations on the MLA, with respect to Meridionese nationals.

(a) The general provisions of the Geneva Conventions of 1949 were not applicable as the conflict was not of an international character.

The general provisions of the Geneva Conventions of 1949<sup>6</sup> (hereinafter 'Geneva Conventions') are only applicable when an 'international armed conflict' has occurred.<sup>7</sup> As the hostilities took place solely within the boundaries of Meridion without any foreign military assistance, the conflict is clearly not an 'international armed conflict'.<sup>8</sup>

(b) Common Art. 3 of the Geneva Conventions (hereinafter 'Art. 3') did not impose any obligations upon the MLA during the hostilities.<sup>9</sup>

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4. 2 D.P. O'CONNELL, INTERNATIONAL LAW, (2d ed. 1970) 1043.
5. For an example of a case based on a treaty obligation, see The Greek Cases, [1969] 12 Y.B. EUR. CONV. ON HUMAN RIGHTS 194-6.
6. 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 Condition of the Wounded, Sick and Ship-Wrecked Members of the Armed Forces at Sea, 75 U.N.T.S. 85.
7. See Common Art. 2 of the Geneva Conventions, supra note 6.
8. Farer, Humanitarian Law and Armed Conflicts: Towards the Definition of 'International Armed Conflict' 71 COLUM. L. REV. 37 (1971) at 44-47.
9. The sole regime of law stipulated by the Geneva Conventions to be applicable in internal conflicts is Art. 3. J. PICTET, COMMENTARY ON THE GENEVA CONVENTIONS RELATIVE TO THE TREATMENT OF PRISONERS OF WAR (1960) 42; 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:

Although the Republic of Meridion (hereinafter 'ROM') was a party to the Geneva Conventions these Conventions cannot be regarded as imposing obligations upon the MLA. First, as the MLA had never assented to the obligations under Art. 3, it cannot be regarded as being bound by Art. 3.<sup>10</sup> Secondly, state practice clearly establishes that Art. 3 is only applicable to an internal conflict if it is invoked by the existing government or the liberation movement.<sup>11</sup> Nothing indicates that Art. 3 has been invoked or assented to by either the MLA or the ROM.

Protocol II of the Protocols Additional to the Geneva Conventions of 1949<sup>12</sup> (hereinafter 'Protocol II') had no application to the hostilities as it was not then in force.<sup>13</sup>

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(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 above-mentioned 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 recognised as indispensable by civilized peoples.

10. Yingling & Ginnane, The Geneva Conventions of 1949, 46 AM. J. INT'L L. 393 (1952) at 396; DRAPER, THE RED CROSS CONVENTION (1958) 17; Note: The Geneva Conventions and Treatment of Prisoners of War in Vietnam, 80 HARV. L. REV. 851 (1967) at 856-7; Cassese, The Status of Rebels Under the 1977 Geneva Protocol on Non-International Armed Conflicts, 30 INT'L COMP. L. Q. 416 (1981) at 429.

11. An analysis of 33 internal conflicts between 1949 to 1975 leads to the inescapable conclusion that states do not view Art. 3 as having 'automatic' application to an internal conflict. For a list of the conflicts see Forsythe, Legal Management of Internal War, 72 AM. J. INT'L L. 272 (1978) at 275-6; see also J. BOND, THE RULES OF RIOT, (1974) 59-61.

12. Reprinted in 16 INT'L LEGAL MATERIALS, 1391 (1977).

13. It was only open for signature on Dec. 12 1977, long after the hostilities ceased. It does not purport to apply retroactively.

(c) Art. 3 is not customary international law.

The provisions of Art. 3 did not codify customary international law nor have they since attained the status of customary international law, so as to impose obligations on the MLA independent of its assent.<sup>14</sup>

(d) The rules of customary international law of warfare were not applicable as the MLA did not achieve the status of a belligerent.

A state of war cognizable and regulated by international law can only exist between sovereign states, unless one of the non-state parties to the conflict has been recognized as a belligerent.<sup>15</sup> The MLA has not been so recognized at any time.

Protocol II is not and does not purport to be a codification of customary international law.<sup>16</sup>

3. The treatment of Meridionese nationals during the hostilities was not governed by any rules of international law relating to human rights.

(a) The United Nations Charter and the 1948 Universal Declaration on Human Rights did not create any binding legal obligations for the MLA.

The United Nations Charter<sup>17</sup> does not create any special legal obligations with regard to the treatment of nationals.<sup>18</sup> The 1948 Universal Declaration on Human Rights<sup>19</sup> is merely exhortatory in nature

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14. J. BOND, supra note 11 at 33, 34, 58; Kilgore, Law of War-Geneva Convention Signatories Clarify Applicability of Law of War to Internal Conflicts, 8 GA. J. INT'L & COMP. L. 941 (1978) at 945; Cassese supra note 10 at 430.

15. 2 L. OPPENHEIM, INTERNATIONAL LAW (8th ed. 1955 ed. H. Lauterpacht) 248.

16. 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'HERN AFRICA 81 (1981) at 89-91.

17. 59 Stat. 1031 (1945) T.S. No. 993.

18. Under the United Nations Charter the only obligation is to "cooperate with the United Nations to promote universal respect for human rights", U.N. Charter Art. 55 & 56, supra note 17.

19. G.A. Resolution 217A (III) G.A.O.R. 3rd Session, Part 1, Resolutions at 17.

and an example of lex ferenda.<sup>20</sup> State practice illustrates that there are no rules of customary international law creating binding legal obligations vis-a-vis nationals - at least in the context of internal hostilities.<sup>21</sup> Binding human rights obligations with regard to a state's own nationals can only be created and enforced through treaties.

(b) The 1966 International Covenant on Civil and Political Rights<sup>22</sup> (hereinafter 'the 1966 Political Covenant') is not applicable for the purposes of the present adjudication.

The 1966 Political Covenant cannot be invoked because the Kingdom of Septentrion (hereinafter "Septentrion") is not a party to it.<sup>23</sup>

All states can be held to have a legal interest in the protection of fundamental human rights, because of their importance; - they are obligations erga omnes.<sup>24</sup> However, on the 'universal level the instruments which embody human rights do not confer on states the capacity to protect the victims of such rights irrespective of their nationality.'<sup>25</sup> Compliance with the provisions of the 1966 Political Covenant is therefore not a justiciable issue between Septentrion and the PDRM.

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20. It is not, and does not purport to be, a statement of law or legal obligations, 19 U.S. State Bulletin 751 (1948); Watson, Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law, 3 ILLINOIS L. F'UM 609 (1979) at 627.

21. See Forsythe, supra note 11; BOND supra, note 11 at 61; Watson, supra note 20.

22. G.A. Res. 2200, 21 U.N. G.A.O.R. Supp. (No. 16) 49 U.N. Doc. A/3616 (1966).

23. South-West Africa Cases [1966] I.C.J. Rep. 4; 1 O'CONNELL supra, note 4 at 246.

24. Barcelona Traction, Light and Power Co. Case [1970] I.C.J. Rep. 3 at 32.

25. Id. at 48; The 1966 Political Covenant was not a codification of international law and has still not achieved the status of customary international law. Watson supra note 20 at 624; Starr, International Protection of Human Rights and the United Nations' Covenants [1967] WIS. L. REV. 863.

**C. The treatment of the Septentrionese BIS personnel during the hostilities was governed only by the rules of customary international law relating to the treatment of aliens.**

The treatment of aliens by a successful liberation movement is governed by the rules of customary international law<sup>26</sup> which do not however, lay down any single absolute international standard against which the treatment is to be judged.<sup>27</sup> To amount to an international delinquency, the treatment of the alien must fall so far short of international standards that in the circumstances every reasonable and impartial person would recognise its insufficiency.<sup>28</sup> Unusual circumstances such as the outbreak of war create exceptions to the notional international standard.<sup>29</sup> In light of the internal hostilities Art. 3, although not applicable as a treaty rule (supra IB(2)(b)), remains the best yardstick against which the treatment of an alien during an internal conflict should be judged. It encapsulates the basic principles of humanitarian treatment which should be applicable in internal conflicts.<sup>30</sup>

**D. The PDRM is not responsible under international law for the treatment of the Benevolent International Society's (hereinafter 'BIS') personnel during the 'hospital incident' in South-East Province, in September 1976 or the 'school incident' in Polis, Central Province in early 1977.**

1. The treatment of Septentrionese personnel during the incidents in question was in conformity with the requirements of international law with regard to the treatment of aliens in internal conflicts.

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26. For an instance see George Pinson Claim, 5 R. INT'L ARB. AWARDS 327 (1928).

27. I. BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW (3d ed. 1979) 526, 528.

28. Neer Claim, 4 R. INT'L ARB. AWARDS 60 (1926) at 61-2.

29. I. BROWNLIE, supra, note 27 at 526; D.W. GREIG, INTERNATIONAL LAW, (2d ed. 1976) 555.

30. J. PICTET supra, note 9 at 34.

- (a) The alleged detention incommunicado of 20 BIS personnel in a hospital, in South-East Province, did not contravene international law.

Art. 3 did not create any obligations on the MLA with regard to Meridionese nationals (supra IB(2)(b)). However, even if Art. 3 were applicable vis-a-vis the Meridionese BIS personnel, no contravention of Art. 3 occurred. Preventive detention per se does not constitute inhuman treatment, nor does it violate Art. 3.<sup>31</sup>

Art. 3 does not afford any special privileges or immunity to hospital personnel<sup>32</sup> nor guarantee an internee any right to communicate freely or to receive relief.<sup>33</sup> An application of the detailed provisions of Arts. 4 and 5 of Protocol II would not alter this position. The alleged detention incommunicado of BIS hospital personnel (whether Septentrionese or Meridionese) was therefore not in violation of Art. 3.

- (b) The 'beating' of the Septentrionese school director in Polis, Central Province did not contravene international law.

The expressions 'humanely', 'humiliating' and 'degrading' in Art. 3 must be judged in the context of specific conduct.<sup>34</sup> In an internal conflict what is legal or illegal should not be judged by absolute standards. What is cruel or excessive is a relative question varying between different societies and even different periods of time within the same society.

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31. J. BOND supra, note 11 at 4, 124; Kelly, Legal Control of Populations in Subversive Warfare, VIRG. J. INT'L L. 174 [1964] at 193.
32. Santiago, Humanitarian Law in Armed Conflicts: Protocols I and II of the 1949 Geneva Conventions, 54 PHILIPPINE L.J. 188 (1979) at 212.
33. J. BOND supra, note 11 at 124, Borrowdale, supra, note 16 at 90.
34. In this respect see Ireland v. United Kingdom, Application 5310/71, 1976 Report of the European Commission of Human Rights 151-220 (adopted Jan 25 1976) at 495-97. For the text of Art. 3 see note 9.
35. In this respect see The Parker Report, U.K. Cmnd. No. 4901 (1972) para. 30 at 6-7.

Not only did the 'beating' of the Septentrionese school director occur within the context of an internal conflict but it was also a single, isolated incident and not part of an administrative practice on the part of the MLA.

Further, the beating could not constitute torture. For torture to be committed there must be pain caused at the instigation of or by an official acting in his 'official capacity'.<sup>36</sup> There is no evidence of any official involvement attributable to the PDRM nor of any ratification by the new government. Revolutionary Order Number 1 cannot be construed as amounting to a ratification of the act in question.

(c) The trial of the Septentrionese BIS personnel by the People's Court and their subsequent execution in Polis, Central Province did not contravene international law.

The Peoples' Court was a 'regularly constituted court' within the meaning of Art. 3. The 'regularly constituted court' requirement of Art. 3 should not be construed literally.<sup>37</sup> The test is authoritativeness; that is whether the appropriate MLA authorities, acting under appropriate powers, created the court.<sup>38</sup>

The requirement under Art. 3 that the Court should afford all judicial guarantees recognised as indispensable by 'civilized peoples' can mean no more than those enumerated in Art. 6 of Protocol II. Neither Art. 3 nor Art. 6 of Protocol II provide for every accused to testify on his own behalf nor for representation by counsel. Such requirements would create obligations impossible for a liberation movement to fulfil

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36. United Nations Declaration on Protection From Torture 1975, G.A.O.R. 3452 (XXX), Dec. 9, 1975, U.N. Doct. Suppl. No. 34 (A/10034); see also Filartiga v. Pena-Irala, 630 F. 2d. 876 (1980) at 884, where it was held that official torture violated international law.

37. J. BOND supra note 11 at 119.

38. Id.

in the midst of a conflict. It is only punishment without a fair and impartial trial that is prohibited by Art. 3 and Art. 6 of Protocol II.

While Art. 3 is silent as to the scope of permissible punishments, it impliedly sanctions executions, only conditioning their imposition upon a prior judicial determination of guilt.<sup>39</sup> Further, no right of appeal is guaranteed by Art. 3, Art. 6 of Protocol II or by any other rule of international law.<sup>40</sup>

2. In any event, the acts of the 'persons wearing MLA uniforms' during the hospital incident in Southeast Province and the 'uniformed militia' during the school incident in Central Province are not attributable to the MLA.

The MLA was only responsible for the acts of its own soldiers and those acting under its authority (supra, IA). There is no factual or legal basis for linking the MLA authorities with 'persons wearing the MLA uniforms' during the hospital incident in Southeast Province or with the 'uniformed militia' who 'beat' the Septentrionese school director in Central Province. Further, neither the MLA nor the PDRM has ratified or adopted the acts of those persons.

In the absence of clear and indisputable facts, there can be no attribution of 'blameworthiness'. A state cannot be condemned on the basis of probabilities.<sup>41</sup>

**II. THE TREATMENT OF THE SENIOR SEPTENTRIONESE BIS PERSONNEL BY THE PEOPLE'S REVOLUTIONARY COURT, (hereinafter 'PRC') DURING THE EMERGENCY DECLARED BY THE PDRM, WAS NOT IN VIOLATION OF INTERNATIONAL LAW.**

- A. The trial of the senior Septentrionese BIS personnel by the PRC was governed only by the rules of customary international law relating to trial proceedings of aliens.

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39. J. BOND supra, note 11 at 121.

40. Harris, The Right to a Fair Trial in Criminal Proceedings as a Human Right 16 INT'L COMP. L.Q. 352 (1967) at 372.

41. Judge Krylov in Corfu Channel Case [1949] I.C.J. Rep. 4 at 72.

1. The Geneva Conventions and the 1966 Political Covenant are not applicable.

The government of the PDRM as the successor to the government of the ROM is bound by treaties entered into by that government. The Geneva Conventions, however, do not govern trial proceedings after the cessation of hostilities. The provisions of the 1966 Political Covenant are not applicable for the purposes of the present adjudication because Septentrion is not a party to the 1966 Political Covenant (supra IB(3)(b)).

2. Customary international law requires that the trial of aliens should normally conform to certain general standards.

Customary international law requires that trial proceedings in peaceful conditions conform to certain general standards. These requirements include inter alia:

- (i) that the court be fair, independent and impartial;
- (ii) a presumption of innocence with regard to the accused and the placing of the burden of proof on the prosecution;
- (iii) the right to be informed promptly of all charges and adequate time to prepare the defence;
- (iv) the right to counsel;
- (v) a general right of cross-examination.<sup>42</sup>

In the final analysis, however, the question of whether the trial is 'fair' and in accordance with international law must be decided on the basis of a consideration of the trial as a whole and not on the basis of an isolated consideration of one particular aspect of the

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42. Cf. Art. 6 of Protocol II, supra note 12; se also Harris, supra note 40.

trial.<sup>43</sup>

3. Further in a national emergency, derogations are permissible from the standard required by customary international law in normal circumstances.

In a time of national emergency, derogations are permissible.<sup>44</sup> All the major human right covenants, including the 1966 Political Covenant, provide for derogation of rights in trial proceedings during an emergency.<sup>45</sup>

The trial of the Septentrionese took place during the emergency declared by the PDRM. In judging whether the trial was in conformity with international law, this is an important consideration to be taken into account.

**B. The treatment of the senior Septentrionese BIS personnel by the PRC was in accordance with international law.**

1. The PRC is a regularly constituted court.

The PRC was established by the PDRM and was competent to try the accused Septentrionese. There is no rule of international law stipulating that only pre-established courts have jurisdiction to try offenders after a revolution.<sup>46</sup>

2. The accused Septentrionese were provided with counsel.

An accused person's right to counsel merely relates to the defence being conducted by a legally qualified person. There is no absolute

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43. Nielsen v. Denmark (Merits) 4 Y.B. EUR. CONV. ON HUMAN RIGHTS 494 at 548. An error of a national court that does not produce manifest injustice is not a denial of justice: Art. 9 of the Harvard Draft Convention on Responsibility of States. Reprinted in 23 AM. J. INT'L L; Sp. Supp. 133 (1929).

44. D.W. GREIG; I BROWNLIE supra, note 29.

45. Art 4(1) of the 1966 Political Covenant permits derogations to be made inter alia from the standards stipulated in Art. 14. So do Art. 15 of the European Convention on Human Rights 1950, U.K.T.S. 70 (1950), Cmnd. 8969 and Art. 27 of the American Convention on Human Rights 1969, reprinted in 9 INT'L LEGAL MATERIALS, 273 (1970).

46. Harris, supra, note 40 at 356.

right to counsel of 'own choosing' for an accused alien. Even under the European Convention on Human Rights 1950,<sup>47</sup> (hereinafter 'European Convention') which arguably sets the highest standards in terms of human rights, and which provides expressly for the accused to have counsel of 'own choosing',<sup>48</sup> it has been held that counsel who pose a security threat may be barred from appearing for accused persons.<sup>49</sup>

Further, as the PDRM was under a state of emergency, the judge was justified in barring the appearance of counsel who were 'security risks'. Since the accused Septentrionese were in fact defended by counsel, no breach of international law occurred.

3. The accused Septentrionese were permitted to cross-examine all witnesses who gave oral evidence.

During the course of the trial proceedings, the accused Septentrionese were permitted to cross-examine all witnesses who gave oral evidence. There is no recognised right of customary international law for an accused to cross-examine the makers of written statements, who do not give oral evidence. In fact, even under Art. 6(1) of the European Convention, which expressly provides for the accused to 'examine or have examined witnesses against him' it has been held that there is no right to cross-examine the makers of written statements who do not give oral evidence.<sup>50</sup>

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47. U.K.T.S. 70 (1950), Cmnd. 8969.

48. Art. 6(2)c of the European Convention which provides for counsel of 'own choosing' is in pari materia with Art. 14(2)b of the 1966 Political Covenant.

49. App. No. 722/60. V Y.B. EUR. CONV. ON HUMAN RIGHTS 104 at 106, cited in Harris supra, note 40 at 365.

50. See J.E.S. FAWCETT, APPLICATION OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS, (1969) at 174. Art. 6(1) of the European Convention is in pari materia with Art. 14(1) of the 1966 Political Covenant.

4. The charges as well as the sentences imposed on the accused Septentrionese were not in violation of international law.

The formulation of the charges against the accused Septentrionese did not violate any principle of international law. The principle nullum crimen sine lege, nulla poena sine lege, in so far as it negates municipal penal legislation with retroactive effect, is not a rule of customary international law.<sup>51</sup> In any event, there is ample evidence to prove that all the accused Septentrionese were aware that they were committing offences at the time of commission. The meeting of the BIS management and their subsequent instructions to BIS personnel in Meridion, indicates that the accused must have known of the illegality of their subsequent conduct.

With regard to the charge of committing 'cultural genocide' preferred against the accused, it should be noted that international law recognises that a state has a very wide discretion to prescribe offences within its territory.<sup>52</sup> In fact, international law far from prohibiting the creation of such an offence expressly recognises the rights of people to protect and maintain their cultural and religious heritage.<sup>53</sup>

Finally, the sentences passed were neither degrading nor inhuman as they were commensurate with the heinous nature of the offences committed.

- C. In any event, as the customary international rule of law relating to the exhaustion of local remedies has not been complied with, no responsibility attaches to the PDRM.

The rule relating to the exhaustion of local remedies is a substantive rule of international law.<sup>54</sup> The PDRM has not therefore waived the rule in submitting to the present adjudication.

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51. Attorney-General of Israel v. Eichman 36 INT'L L.R. 5 at 281; STONE, LEGAL CONTROL OF INTERNATIONAL CONFLICTS (1959) 369.

52. The S.S. Lotus Case [1927] P.C.I.J. Rep. Ser. A, No. 9 at 18.

53. See UN G.A.O.R. Res. 96(1), Dec. 11 1946, 78 U.N.T.S. 277. R. LEMKIN, AXIS RULE IN OCCUPIED EUROPE (1944) 79-95.

54. Judge Hudson in Panevezys-Saldutiskis Railway Case [1939] P.C.I.J. Rep. Ser. A/B No. 76 at 47; Judge Morelli in The Barcelona

Assuming arguendo, that there had been a denial of justice, the failure of counsel for the convicted Septentrionese to lodge timely appeals deprived the PDRM of an opportunity to remedy the situation.<sup>55</sup> Consequently, no state responsibility ensued. In the circumstances, Septentrion is not even entitled to a declaratory judgment with regard to the treatment of the Septentrionese by the PRC.<sup>56</sup>

**III. THE PDRM IS NOT RESPONSIBLE UNDER INTERNATIONAL LAW WITH RESPECT TO THE MIGRATION OF PEOPLE FROM MERIDION TO SEPTENTRION**

**A. The claim of Septentrion for reparation is contingent on the existence of state responsibility in causing the migration of people.**

The claim by Septentrion for the costs of housing and feeding the Meridionese refugees cannot be sustained under international law unless the PDRM has breached its international obligations with respect to the migration of people.

**B. There is no rule of international law governing the migration of people from one state to another.**

Under international law, the burden is on Septentrion to establish that the PDRM has violated a rule of international law when persons within its territory migrated to Septentrion.<sup>57</sup> The PDRM's actions were not in contravention of any treaty obligations vis-a-vis Septentrion as nothing in the 1967 Protocol Relating to the Status of Refugees<sup>58</sup> (hereinafter referred to as the 1967 Protocol), or any other

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54. Traction, Light and Power Co. Case (Preliminary Objections) [1964] I.C.J. Rep. 1114; see also the commentary to Draft Article 22 of the International Law Commission's Draft Articles on State Responsibility [1977] 2 Y.B. INT'L L. COMM'N., Part One at 30-31. U.N. Doc. No. A/CN.4/Ser. A/1977/Add 1.

55. Ambatielos Arbitration, 12 R. INT'L ARB. AWARDS 83 (1956) 115-124. Finnish Arbitration Case, 3 R. INT'L ARB. AWARDS 1479 (1934) at 1500-1505.

56. C.H.P. LAW, THE LOCAL REMEDIES RULES IN INTERNATIONAL LAW (Geneva, Droz 1961) 110.

57. Asylum Case, [1950] I.C.J. Rep. 266 at 276-7.

58. 606 U.N.T.S. 267.

Further, the migration was not in violation of rules of customary international law. Although innumerable instances of migration of people have occurred, the states of refuge have never brought a claim for breach of international obligations against the states of origin. The complete absence of state practice in this respect is fatal to the establishment of a rule of customary international law.

**C. The doctrine of abuse of rights does not apply to the migration of people.**

The doctrine of abuse of rights under the Trail Smelter<sup>59</sup> principle is not applicable as it is confined to transnational pollution and the conduct of ultra-hazardous activities. Further extension of the Trail Smelter principle can only be justified by treaties or by consistent and uniform state practice, neither of which exists at present.

**D. Even if the doctrine of abuse of rights is extended to the migration of people, two essential conditions have not been satisfied.**

**1. The PDRM did not wilfully cause the migration of people to Septentrion.**

The wilful flooding of other states with refugees causing serious damage may constitute a breach of international law.<sup>60</sup> However such intention cannot be attributed to the PDRM as the persons who left did so on their own accord even before the new revolutionary government came into power and before the passing of the Revolutionary Order No. 1 and

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59. The Trail Smelter Arbitration 3 R. INT'L ARB. AWARDS 1905 (1941) 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 established by clear and convincing evidence."

60. Jennings, Some International Law Aspects of the Refugee Question, 20 BRIT. Y. B. INT'L L. 98 (1939) at 110; A similar argument has been suggested on behalf of India with respect to the Bangla Desh incident in 1971, see Nawaz, Bangla Desh and International Law, 11 INDIAN J. INT'L L. 251 (1971) at 265.

the police orders. The migration was an incidental by-product of the war of liberation waged by the MLA against the former government of Meridion.

2. There is no evidence of clear and convincing damage sustained by Septentrion.

The damage sustained by Septentrion must be established by clear and convincing evidence.<sup>61</sup> Under the Trail Smelter principle, the damage contemplated is physical injury inflicted on the territory of another state. The Meridionese refugees did not cause any physical injury to the persons or property of Septentrion.

The only conceivable injury would have been the potential threat posed by the Meridionese to the social order and economy of Septentrion. Such a potential threat is neither clear nor convincing evidence of damage. Further, the costs of housing and feeding the Meridionese refugees cannot constitute damage as this was not an injury inflicted by the Meridionese. The feeding and housing of the Meridionese was a humanitarian act voluntarily incurred by Septentrion.

**IV. SEPTENTRION'S ACTIONS IN DETAINING MERIDIONESE REFUGEES, IN DECLINING TO RESETTLE DETAINEES INTO SEPTENTRIONESE SOCIETY, AND IN FORCIBLY RETURNING OTHERS TO MERIDION, WERE IN VIOLATION OF INTERNATIONAL LAW.**

A. In order to decide the dispute between the parties, it is essential to determine whether Septentrion's treatment of the Meridionese refugees was in accordance with its treaty obligations under the 1967 Protocol.

As a contracting state to the 1967 Protocol, the PDRM has the right under Art. IV<sup>62</sup> of the 1967 Protocol to raise any issue in a dispute with

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61. The Trail Smelter Arbitration, supra note 59 at 1965. The requirement of clear and convincing damage was also applied by US State Courts in interstate pollution cases in Minnesota v. Illinois 200 U.S. 496 (1906) and in New York v. New Jersey 256 U.S. 296 (1921).

62. Art. IV states "Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute".

another contracting party relating to the interpretation or application of the provisions of the 1967 Protocol. The PDRM is not raising this dispute under the principle of protecting its nationals abroad and it is not making any claim against Septentrion relating to the detention of the Meridionese refugees. The PDRM only seeks a declaration that the actions of Septentrion were in violation of its obligations under the 1967 Protocol.

Septentrion can make no claim for the costs of housing and feeding the Meridionese refugees because their detention was not in accordance with the 1967 Protocol. This submission is based on the principle of ex delicto non oritur actio, that a party who asks for redress must present himself with clean hands which is recognised under international law.<sup>63</sup>

**B. The detention of Meridionese refugees in temporary resettlement camps was in violation of international law.**

1. The detention of refugees who entered Septentrion was governed by the 1967 Protocol.

Both the PDRM and Septentrion are parties to the 1967 Protocol. By virtue of Art. I(1) of the 1967 Protocol, Arts. 2-34 of the 1951 Convention Relating to the Status of Refugees,<sup>64</sup> (hereinafter referred to as the 1951 Convention) are binding.

2. International law recognises that some of the Meridionese were bona fide refugees within the definition of the 1951 Convention.

It is not essential to establish that all the Meridionese were refugees. As long as some were bona fide refugees, the treaty provisions under the 1967 Protocol would come into play. The law pertaining to

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63. B. CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 155 (1953); The Medea and the Good Return Cases, 3 INT'L ARB., 2731 (1862) at 2738-9; Eastern Greenland Case, [1933] P.C.I.J., Ser. A/B., No. 53 at 95. "An unlawful act cannot serve as the basis of an action in law."

64. 189 U.N.T.S. 137.

refugeehood is embodied in Art. 1A(2) of the 1951 Convention which applies by virtue of Art. I(2) of the 1967 Protocol. Many of the Meridionese who left Meridionese qualified as refugees under the definition in the 1951 Convention. Those people were unable or unwilling to return to Meridion because they feared reprisals from the newly formed revolutionary government. This fear was proved to be well founded by the passing of the Revolutionary Order No. 1.

3. Detention of the Meridionese refugees present in Septentrion was inconsistent with the provisions of the 1951 Convention.

(a) Detention of the refugees was in violation of the right of access to courts guaranteed under Art. 16 (1) of the 1951 Convention.

The Meridionese refugees were not afforded legal services and no judicial or administrative remedies were available. Art. 16(1)<sup>65</sup> was specifically included to apply to persons who had only recently become refugees and therefore had no habitual residence.<sup>66</sup> This right of access to courts is so fundamental that it does not depend on lawful presence, nor may any party to the 1967 Protocol make any reservation to it.<sup>67</sup>

(b) Detention of the refugees cannot be justified under Art. 31(2) of the 1951 Convention which permits a state to impose necessary restrictions.

Art. 31(2) applies to prima facie refugees pending determination of their bona fide refugee status.<sup>68</sup> According to Art.31(2), Septentrion

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65. Art. 16(1) states "A refugee shall have access to the courts of law on the territory of all Contracting States."

66. N. ROBINSON, CONVENTION RELATING TO THE STATUS OF REFUGEES: ITS HISTORY, CONTENTS AND INTERPRETATION (1953) 112.

67. Art. VII of the 1967 Protocol states: "At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies."

68. 2 A. GRAHL-MADSEN, THE STATUS OF REFUGEES IN INTERNATIONAL LAW (1972) 224.

was permitted to impose necessary restrictions upon those claiming refugee status until their status was regularised or until they obtained admission into another country. The Septentrionese authorities were bound to lift all restrictions once it became clear that some of the Meridionese were actually refugees.<sup>69</sup> Detention under Art. 31(2) may not be resorted to only for the convenience of police or immigration officials.<sup>70</sup> Restrictions imposed on such refugees shall be of a temporary nature.<sup>71</sup> The length of the detention was indefinite and such detention is certainly proscribed by Art. 31(2). Septentrion must have become aware that some of the Meridionese were bona fide refugees. Hence their continued detention for an indefinite period was contrary to Art. 31(2).

(c) Detention of the Meridionese refugees cannot be justified as provisional measures under Art. 9 of the 1951 Convention.

Art. 9<sup>72</sup> is intended to apply when it might be impossible for a state to make an immediate distinction between enemy nationals supporting the enemy state and refugees from that state<sup>73</sup> and is only applicable to particular persons. Such provisional measures can only be justified on a person to person basis. Art. 9 cannot be indiscriminately applied to all Meridionese refugees. Moreover, the measures must be suspended if the persons involved can prove their status as refugees.<sup>74</sup> Hence the group detention of all Meridionese cannot be justified under Art. 9.

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69. Id. at 437.

70. Id. at 418.

71. Id. at 420.

72. Art. 9 allows Septentrion to take provisional measures in time of war or other grave and exceptional circumstances if they are necessary in the case of individual refugees in the interest of national security.

73. N. ROBINSON, supra, note 66 at 95.

74. Id.

4. Septentrion cannot rely on its municipal laws to avoid its international obligations.

It is an established principle of international law that a state may not rely on its municipal legislation to avoid its international obligations.<sup>75</sup> Hence Septentrion cannot rely on its immigration laws to justify its breaches of the 1967 Protocol.

C. **Septentrion's refusal to resettle refugees into Septentrionese society constituted a violation of Art. 34 of the 1951 Convention.**

1. Septentrion failed to consider in good faith the Meridionese request for resettlement.

Naturalisation is the final goal of the international protection accorded to refugees.<sup>76</sup> Septentrion has a two-fold obligation under Art. 34. The first is to facilitate, as far as possible, the naturalisation and assimilation of refugees. The second is to expedite naturalisation proceedings. Septentrion, in refusing to meet the Meridionese representatives and in dismissing them as 'troublemakers', has violated Art. 34 as it has failed to facilitate and expedite naturalisation proceedings.

D. **Septentrion's action in forcibly returning the Meridionese to Meridion was in violation of international law.**

1. Septentrion has violated the principle of non-refoulement.

The principle of non-refoulement under Art. 33<sup>77</sup> of the 1951 Convention has crystallised into a generally accepted principle of

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75. Art. 27 of the 1969 Vienna Convention on the Law of Treaties, reprinted in 63 AM. J. INT'L L. 875 (1965); see also Alabama Arbitration Award, MOORE INT'L ARB. 495 (1872).

76. Khan, Legal Problems Relating to Refugees and Displaced Persons, 149 RECUEIL DES COURS 287 (1976) at 325.

77. Art. 33 (1) 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."

international law.<sup>78</sup> No reservation may be made to Art 33.<sup>79</sup> The object and purpose of the principle is to protect displaced persons from being returned to a territory where they fear persecution. No one should be returned or expelled to a territory where he apprehends persecution. Many of the individuals who left Meridion by sea were unwilling or unable to return. By intercepting and escorting the Meridionese vessels to Meridionese territorial waters, Septentrion has 'returned' the Meridionese to a territory where they were likely to face persecution.

2. Septentrion's action amounted to an unjustifiable interference of the freedom of navigation on the high seas.

Freedom of navigation is embodied in Art. 2(1) of the 1958 Geneva Convention on the High Seas<sup>80</sup> which states in its preamble that it is "generally declaratory of established principles of international law."

The general principle of the freedom of navigation forbids any interference in times of peace with ships of another nationality upon the high seas unless it falls within one of the exceptions:

- (a) When it is the exercise of right of approach to verify the flag of a ship<sup>81</sup>
- (b) When there is reasonable ground for suspecting that the ship is engaged in piracy or slave trading<sup>82</sup>
- (c) When there is an agreement between the states concerned providing an exception to the general rule.<sup>83</sup>

None of the exceptions are applicable on the facts.

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78. Weis, The United Nations Declaration on Territorial Asylum, 7 CAN. Y.B. INT'L L. 92 (1969) at 142; Pugash, The Dilemma of the Sea Refugee: Rescue Without Refuge, 18 HARV. J. INT'L L. 577 (1977) at 591.

79. Supra, note 67.

80. 450 U.N.T.S. 82, reprinted in 52 AM. J. INT'L L. 842 (1958)

81. Id., Art. 22(2); H.A. SMITH, LAW AND CUSTOM OF THE SEA (1959) 64.

82. Id., Art. 22(1)(a) & (b).

83. Id., a recent instance of an interference on the high seas which was justified by treaty is exemplified in the Haiti refugee problem reported in The Economist 31 Oct 1981 at 42.

As such, this Court must vigorously condemn this act which flouts the spirit and letter of the freedom of navigation on the high seas.

3. Septentrion's action amounted to a deprivation of the right to seek asylum.

Although the right of an individual to be granted asylum is still a controversial question, it is undoubtedly clear that the right to seek asylum is an established human right. This right has been incorporated in almost every single international human rights instrument<sup>84</sup> and has never been queried by any state. Further, the 1951 Convention was passed with the primary purpose of further entrenching the right of a refugee to seek asylum.<sup>85</sup> The action of Septentrion in escorting the vessels into Meridionese waters deprived the Meridionese of their inherent right to seek asylum in other countries. The ship could certainly not be used as an impromptu forum for screening refugees.<sup>86</sup>

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84. See Art. 14(1) supra note 19.

85. Patrinoic and Santiago, Promotion, Dissemination and Teaching of International Refugee Law: Towards a New International Social Order, 55 PHILIPPINE L.J. 139 (1980) at 148.

86. The Devil and the Deep Blue Sea, The Economist Oct 31 (1981) at 42.

**CONCLUSION AND REQUEST FOR RELIEF**

**CONSIDERING THAT** the PDRM is not responsible for the treatment of BIS personnel under international law;

**CONSIDERING THAT** the PDRM is not responsible under international law for the migration of people from Meridon to Septentrion;

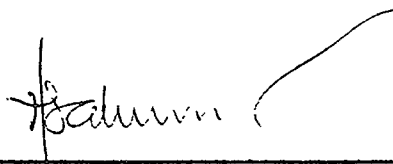
**CONSIDERING THAT** Septentrion's action in detaining the Meridionese refugees was not in accordance with its obligations under the 1967 Protocol on Refugees;

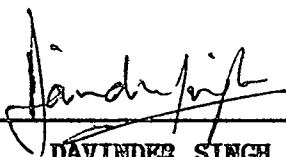
**CONSIDERING THAT** Septentrion's action in forcibly returning Meridionese persons to the PDRM was not in conformity with international law;

The People's Democratic Republic of Meridion respectfully requests this Honourable Court to

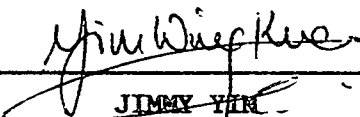
1. **DECLARE** that the treatment of BIS personnel by the PDRM was not in violation of international law;
2. **DECLARE** that the PDRM is not responsible for the migration of people from Meridion to Septentrion;
3. **DECLARE** that the treatment of Meridionese refugees by Septentrion was in violation of Septentrion's obligations as a party to the 1967 Protocol Relating to the Status of Refugees;
4. **DECLARE** that the forcible return of Meridionese persons to the PRDM by Septentrion was not in conformity with international law;
5. **DENY** Septentrion all relief sought in the present proceedings

RESPECTFULLY SUBMITTED

  
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STEVEN CHONG

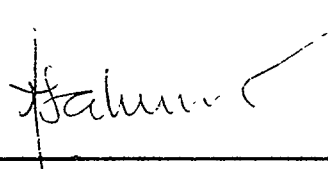
  
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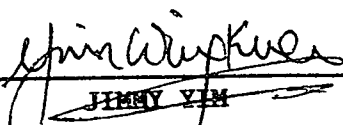
C E R T I F I C A T E

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

  
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STEVEN CHONG

  
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DAVINDER SINGH

  
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RAJAH VIJAYA KUMAR

  
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JIMMY YIN