

THE 1982 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION

IN THE INTERNATIONAL COURT OF JUSTICE

February 1982

THE KINGDOM OF SEPTENTRION

Applicant

v.

THE PEOPLE'S DEMOCRATIC REPUBLIC
OF MERIDION

Respondent

MEMORIAL FOR THE APPLICANT

TEAM #47

Agents for the Kingdom of Septentrion

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TABLE OF CONTENTS

INDEX OF AUTHORITIES vi

JURISDICTION ix

STATEMENT OF FACTS ix

QUESTIONS PRESENTED x

SUMMARY OF ARGUMENT xi

ARGUMENT AND AUTHORITIES

I. THE KINGDOM OF SEPTENTRION HAS STANDING TO ESPOUSE THE CLAIMS OF BIS PERSONNEL AND THEIR FAMILILES 1

A. Septentrion has standing to espouse the claims of all Septentrionese nationals 1

B. Septentrion has standing to espouse the claims of Meridionese nationals who were employed by BIS 1

II. THE PDRM BEARS SOLE RESPONSIBILITY FOR THE TREATMENT OF BIS PERSONNEL BY ITS AGENTS AND ORGANS 2

A. The PDRM is responsible for the treatment of BIS personnel by the MLA during the revolution 2

B. The PDRM is responsible for the treatment of BIS personnel by the People's Revolutionary Court after the revolution 3

III. THE TREATMENT OF BIS PERSONNEL BY AGENTS AND ORGANS OF THE PDRM WAS IN CONTRAVENTION OF INTERNATIONAL LAW 4

A. The PDRM is bound by the treaty obligations of the Republic of Meridion 4

B. The MLA's treatment of BIS personnel during the revolution violated international law 4

1. MLA forces arbitrarily arrested, detained, and held incommunicado BIS employees and volunteers 4

2.	<u>MLA forces caused many deaths and injuries to BIS personnel during the advance on the capital</u>	5
3.	<u>MLA forces engaged in torture and summary executions at Polis</u>	6
C.	<u>The treatment accorded BIS defendants by the People's Revolutionary Court constituted a denial of justice under international law</u>	7
1.	<u>The Court denied the defendants counsel of their own choosing</u>	7
2.	<u>The Court denied the defendants the opportunity to cross-examine witnesses against them</u>	7
3.	<u>The sentences handed down by the Court constituted cruel and inhuman punishment</u>	7
4.	<u>The defendants were deprived of their right to appeal</u>	8
5.	<u>The PDRM could not derogate from its obligations under the International Covenant on Civil and Political Rights</u>	8
IV.	<u>THE PDRM VIOLATED ITS INTERNATIONAL LEGAL OBLIGATIONS BY CAUSING THE MASS MIGRATION OF PEOPLE FROM MERIDION TO SEPTENTRION</u>	8
A.	<u>The PDRM has an unavoidable duty to refrain from conduct which would injure another state</u>	8
1.	<u>A State has a duty to refrain from causing injury to other States</u>	8
2.	<u>The right of a State to wage civil war does not excuse that State from its duty to refrain from injuring another State, or reduce its liability for causing such injury</u>	9
B.	<u>The PDRM is responsible under international law for the migration of Meridionese nationals to the Kingdom of Septentrion</u>	10
1.	<u>The PDRM is responsible for the inevitable and foreseeable consequence of civil war: the flight of civilians</u>	10
2.	<u>The persistent violations of the laws of war by the MLA accelerated and intensified the mass migration of Meridionese to Septentrion</u>	10
3.	<u>Subsequent actions of the PDRM created a situation in which the migration became permanent</u>	11

C.	<u>The mass migration of Meridionese nationals to the Kingdom of Septentrion has caused injury to Septentrion by threatening its public order and internal security and by sapping its financial and human resources</u>	12
D.	<u>The PDRM has compounded the injury to Septentrion by breaching its duty to repatriate its own nationals</u>	12
V.	SEPTENTRION'S ACTIONS IN DETAINING MERIDIONESE PERSONS IN SEPTENTRION, IN DECLINING TO RESETTLE DETAINEES INTO SEPTENTRIONESE SOCIETY, AND IN FORCIBLY RETURNING OTHERS TO MERIDION WERE CONSISTENT WITH INTERNATIONAL LAW	13
A.	<u>Septentrion was under no duty under international law to resettle the Meridionese into Septentrionese society</u>	13
B.	<u>Septentrion's treatment of the Meridionese in the temporary resettlement camps was appropriate under international law</u>	15
1.	<u>Septentrion cannot be charged with violations of international human rights provisions</u>	15
a.	<u>The Universal Declaration of Human Rights is not legally binding on Septentrion</u>	15
b.	<u>The International Covenant on Civil and Political Rights is not legally binding on Septentrion</u>	16
c.	<u>The International Covenant on Social, Economic and Cultural Rights is not legally binding on Septentrion.</u>	16
2.	<u>The treatment of Meridionese in the resettlement camps did not violate the Convention on the Status of Refugees</u>	16
a.	<u>The Meridionese are not entitled to protection under the Convention, as they are not "present" in Septentrion for the purposes of the Convention</u>	16
b.	<u>The Meridionese are not refugees as defined by the Convention and are not entitled to its protection</u>	17
(1)	<u>They were not refugees as defined by the Convention when they left Meridion</u>	17
(2)	<u>Nothing has occurred since their departure which has altered their status</u>	18

(3)	<u>The treatment of the Meridionese was not in violation of customary international law</u>	18
(4)	<u>The treatment of the Meridionese in the resettlement camps was consistent with elementary considerations of humanity</u>	18
C.	<u>The actions of the Septentrionese coastal service in intercepting and escorting Meridionese vessels to Meridionese waters were not in violation of international law</u>	19
1.	<u>The interception on the high seas was not in violation of international law</u>	19
2.	<u>Escorting the Meridionese back into Meridionese waters was not in violation of international law</u>	19
a.	<u>This action was consistent with the duty to rescue</u>	19
b.	<u>This action did not violate the principle of non-refoulement</u>	20
	<u>CONCLUSION AND REQUEST FOR RELIEF</u>	21

INDEX OF AUTHORITIES

INTERNATIONAL AGREEMENTS

- Charter of the United Nations (1945) 9
- Convention on the High Seas, April 29, 1958, 13 U.S.T. 2312,
T.I.A.S. No. 5200, 450 U.N.T.S. 82 (entered into force
September 30, 1962) 19
- Convention Relating to the Status of Refugees, 189 U.N.T.S. 137
(entered into force April 22, 1954) 14, 17
- Geneva Convention Relative to the Protection of Civilian Persons
in Time of War of August 12, 1949, 75 U.N.T.S. 287
(entered into force October 21, 1950) 6, 8, 10
- International Covenant on Civil and Political Rights, opened
for signature December 16, 1966, G.A. Res. 2200A (XXI),
21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316
(entered into force March 23, 1976) 5, 6, 7, 8
9, 11, 16
- International Covenant on Economic, Social and Cultural
Rights, opened for signature December 16, 1966, G.A. Res.
2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc.
A/6316 (entered into force January 3, 1976) 16

DRAFT CONVENTIONS

- Draft Convention on the Law of Responsibility of States for
Damage Done in their Territory to the Persons or Property
of Foreigners, April 1, 1929, 23 Am. J. Int'l L. 133 3
- Revised Draft on International Responsibility of the State
for Injuries Caused in its Territory to the Person or Prop-
erty of Aliens, submitted to the I.L.C. by F. García-Amador,
in Recent Codification of the Law of State Responsibility for
Injury to Aliens (1974) 3
- Draft Convention on the International Responsibility of States
for Injuries to Aliens, Final Draft by L. Sohn and R. Baxter
in Recent Codification of the Law of State Responsibility
for Injury to Aliens (1974) 3

UNITED NATIONS DOCUMENTS AND RESOLUTIONS

- Addendum to the Report of the United Nations High Commissioner
for Refugees, 35 U.N. GAOR Supp. (No. 12A) 16, U.N. Doc.
A/35/12/Add. 1 (1980) 14, 18, 20

Declaration on Territorial Asylum, G.A. Res. 2312, 22 U.N. GAOR Supp. (No. 16) 81, U.N. Doc. A/6717 (1967)	15
Multilateral Treaties in Respect of Which the Secretary-General Performs Depositing Functions, U.N. Doc. ST/LEG/SER.D/13 (1979). . .	16
Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. (A/810) at 71 (<u>proclaimed</u> December 10, 1948)	15

CASES

<u>Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain)</u> , 1970 I.C.J. 3	2
<u>Corfu Channel Case (United Kingdom v. Albania)</u> , 1949 I.C.J. 4	19
<u>Mavrommatis Palestine Concessions</u> , 1924 P.C.I.J., ser. A, No. 2	1
<u>North Sea Continental Shelf Cases</u> , 1969 I.C.J. 3	16
<u>South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)</u> , 1966 I.C.J. 6	2
<u>Shaughnessy v. U.S. ex rel. Mezei</u> , 345 U.S. 206 (1952)	17

TREATISES / DIGESTS / RESTATEMENTS

I. Brownlie, <u>Principles of Public International Law</u> (1966)	4, 9
C. de Visscher, <u>Théories et Réalités en Droit International Public</u> (2d ed. 1955)	1
L. Del Russo, <u>International Protection of Human Rights</u> (1971)	16
A. Freeman, <u>The International Responsibility of States for Denial of Justice</u> (1938)	7
F. García-Amador, L. Sohn and R. Baxter, <u>Recent Codification of the Law of State Responsibility for Injuries to Aliens (1974)</u>	3
G. Goodwin-Gill, <u>International Law and The Movement of Persons Between States</u> (1978)	10, 12, 20
D. O'Connell, <u>State Succession in Municipal Law and International Law</u> (1967)	4
L. Oppenheim, <u>International Law</u> (H. Lauterpacht 8th ed. 1955)	3, 13, 14, 15

Restatement (Second) of Foreign Relations Law of The United States (1965)	4
J. Starke, <u>An Introduction to International Law</u> (7th ed. 1972)	13
O. Udokang, <u>Succession of New States to International Treaties</u> (1972)	4
P. Weis, <u>Nationality and Statelessness in International Law</u> (2d ed. 1979)	12

JOURNALS

Fryer, <u>Applicability of International Law to Internal Armed Conflicts: Old Problems, Current Endeavors</u> , 11 Int'l Law. 567 (1977)	9
Iluyomade, <u>The Scope and Content of a Complaint of Abuse of Right in International Law</u> , 16 Harv. Int'l L. J. 47 (1975)	9
Jennings, <u>Some International Law Aspects of the Refugee Question</u> , 20 B.Y.I.L. 98 (1939)	13
Johnson, <u>Refugees, Departees and Illegal Migrants</u> , 9 Sydney L. Rev. 11 (1980)	10
Mosler, <u>The International Society As a Legal Community</u> , 140 R.C.A.D.I. 176 (1974)	3
Muhammad, <u>Guarantees for Accused Persons Under the U.N. Human Rights Covenants</u> , 20 Indian J. Int'l L. 177 (1980)	6
Paust and Blaustein, <u>War Crimes Jurisdiction and Due Process: The Bangladesh Experience</u> , 11 Vand. J. Transnat'l L. 1 (1978)9, 10	
Vitányi, <u>International Responsibility of States for Their Administration of Justice</u> , 22 Netherlands Int'l L. Rev. 131 (1975)	3
Weis, <u>The Concept of the Refugee in International Law</u> , 87 J. Du Droit Int'l 940 (1960)	14
Williams, <u>Denationalization</u> , 8 B.Y.I.L. 45 (1927)	10

JURISDICTION OF THE COURT

Pursuant to Article 36 of the Statute of the International Court of Justice, "the jurisdiction of the Court comprises all cases which the parties refer to it." In accordance with Article 40 of the Statute, the Kingdom of Septentrion and the People's Democratic Republic of Meridion have agreed to submit the present dispute to the Court, so that it may be decided under the applicable rules of international law as set forth in Article 38(1) of the Statute.

STATEMENT OF FACTS

The parties have agreed to the facts as set forth in the compromis, and a restatement thereof is waived.

QUESTIONS PRESENTED

I

Whether the Kingdom of Septentrion has standing to espouse the claims of BIS personnel and their families.

II

Whether the People's Democratic Republic of Meridion is responsible under international law for the treatment of BIS personnel by the Meridionese Liberation Army and the People's Revolutionary Court.

III

Whether the treatment of BIS personnel by the Meridionese Liberation Army and the People's Revolutionary Court violated international law.

IV

Whether the People's Democratic Republic of Meridion violated international law by causing the mass migration of people from Meridion to Septentrion.

V

Whether the Kingdom of Septentrion's actions in detaining the Meridionese in temporary resettlement camps, in declining to resettle detainees into Septentrionese society, and in forcibly returning others to Meridion violated international law.

SUMMARY OF ARGUMENT

The Kingdom of Septentrion has standing to espouse the claims of the personnel of Benefactors International Society, Ltd. [hereinafter BIS] and their families against the People's Democratic Republic of Meridion [hereinafter PDRM] for injuries caused by agents and organs of the PDRM.

The PDRM bears sole responsibility for the treatment of BIS personnel by the Meridionese Liberation Army [hereinafter, MLA] during the revolution which brought the current government of the PDRM to power. The PDRM is also responsible for the treatment of BIS personnel by the People's Revolutionary Court, a judicial organ of the PDRM.

The treatment of BIS personnel by the MLA and the People's Revolutionary Court must be judged in light of the PDRM's obligations under the multilateral treaties signed and ratified by the Republic of Meridion.

MLA actions toward BIS personnel during the period of insurgency were in blatant disregard of international law. Arbitrary arrest and detention, killing of non-combatants, torture and summary execution are expressly prohibited by multilateral treaties to which Meridion is a party.

The conduct of the People's Revolutionary Court toward BIS defendants after the revolution violated judicial guarantees which are recognized as indispensable by civilized peoples. The denial of counsel, the refusal to allow cross-examination of witnesses, the cruel and inhuman sentences handed down, and the denial of the right to appeal those sentences constitute flagrant violations of international human rights law.

The PDRM is responsible for having caused the mass migration of people from Meridion to Septentrion. The right to wage civil war does not release the PDRM

from responsibility for the consequences of exercising that right. The persistent violations of international standards of conduct by the MLA exacerbated the migration which normally results from the general conditions of civil war. Subsequent actions by the PDRM effectively turned a temporary exodus into a permanent migration.

The Kingdom of Septentrion has no obligation under international law to resettle Meridionese migrants into Septentrionese society. The grant of temporary asylum by a State does not create an obligation to resettle.

The treatment the Meridionese have received in temporary resettlement camps in Septentrion is consistent with international law and does not violate any of Septentrion's treaty obligations.

The interception of Meridionese vessels on the high seas by Septentrion was necessary because of the perilous situation in which the people on board were found. Escorting certain vessels back to Meridionese waters was consistent with the Septentrionese concern for maintaining adequate conditions in the resettlement camps.

ARGUMENT AND AUTHORITIES

I. THE KINGDOM OF SEPTENTRION HAS STANDING TO ESPOUSE THE CLAIMS OF BIS PERSONNEL AND THEIR FAMILIES.

A. Septentrion has standing to espouse the claims of all Septentrionese nationals.

It is a fundamental principle of international law that a State may espouse the claims of its nationals against a foreign state.^{1/} "[B]y taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is, in reality, asserting its own rights -- its rights to ensure, in the person of its subjects, respect for the rules of international law."^{2/}

The Septentrionese employees and volunteers working in Meridion for BIS neither swore allegiance to nor had citizenship conferred upon them by the Meridionese government. On the contrary, they remained loyal Septentrionese subjects. Septentrion, therefore, has standing to exercise its right of diplomatic protection by espousing the claims of these subjects before the International Court of Justice [hereinafter ICJ].

B. Septentrion has standing to espouse the claims of Meridionese nationals who were employed by BIS.

The Meridionese laborers, assistants and servants who were employed by BIS and who, because of their employment, were injured, killed, or captured by insurgent forces of the MLA, cannot expect the PDRM to espouse their claims for mistreatment at the hands of those who brought the present government to power.

In certain cases, particularly those involving diplomatic protection of property, the decision of the State of nationality of the injured party not to press a claim on his behalf is preclusive. No other State, no matter what its connection with the injured party, has standing (locus standi) to espouse such a

1. C. de Visscher, Théories et Réalités en Droit International Public 341 (2d ed. 1955).

2. The Mavrommatis Palestine Concessions, 1924 P.C.I.J., ser. A, No. 2, at 12.

claim; another State's interest does not rise to the level of cognizability as a legal interest under international law.^{3/}

The situation is quite different with respect to the basic rights of human beings, in which all States have a legal interest. These are obligations erga omnes.^{4/} When the State of nationality is the oppressor State, some other State must be permitted, if it has a connection with the injured party, to press for an adjudication and seek damages on behalf of the victim, if the right is to be vindicated at all.^{5/}

In this case, the links between Septentrion and the BIS employees of Meridionese nationality are sufficiently numerous and significant to make Septentrion the obvious and irresistible candidate to espouse the employees' claims before the ICJ. By virtue of the bonds of employment, language, religion, and political sympathy, these employees have much more in common with Septentrion than with the present government of Meridion.

Refusal of the ICJ to allow Septentrion to espouse the claims of these employees would effectively deny them recovery, and would implicitly sanction the reprehensible conduct of the PDRM. Having treated the employees as agents of the "Septentrionese oppressor," the PDRM is estopped from raising their Meridionese nationality as a bar to Septentrion's espousal of their claims.

II. THE PDRM BEARS SOLE RESPONSIBILITY FOR THE TREATMENT OF BIS PERSONNEL BY ITS AGENTS AND ORGANS.

A. The PDRM is responsible for the treatment of BIS personnel by the MLA during the revolution.

Customary international law assigns responsibility to the State for the acts

3. Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain), 1970 I.C.J. 3, 32, para. 35.

4. Id. at 32, paras. 33 & 34.

5. Cf. South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), 1966 I.C.J. 323, 377-82 (Dissenting opinion of Judge Jessup).

of insurgents or revolutionists in the event that the revolution is successful and a new government is installed.^{6/} Responsibility for wrongful acts attaches early on, "even before a group of insurgents has achieved the status of a full-fledged revolution,"^{7/} as long as the insurgents exercise effective control over a certain territory and a certain group of people.^{8/}

The MLA had acquired effective control over the Southeast Province of Meridion by 1976. It performed a variety of governmental functions there, and even BIS complied with its decrees. Responsibility for wrongful acts, having thereby attached in the Southeast Province, followed the MLA as it expanded the area under its control. The PDRM, as the political successor and beneficiary of the MLA insurgency, is therefore directly responsible under international law for the injuries caused by the revolutionists at all times relevant to this dispute.

B. The PDRM is responsible for the treatment of BIS personnel by the People's Revolutionary Court after the revolution.

The People's Revolutionary Court is an officially constituted judicial organ of the PDRM. "There is no doubt that decisions of municipal courts which involve a breach of international obligations may be imputed to the State, since they exercise their jurisdiction in the name of the State."^{9/} Accordingly, any violations of international law during the trial of senior BIS officials are

6. Draft Convention on the Law of Responsibility of States for Damage Done in Their Territory to the Person or Property of Foreigners, April 1, 1929, 23 Am. J. Int'l L. 133, 134, art. 13. Accord Revised Draft on International Responsibility of the State for Injuries Caused in its Territory to the Person or Property of Aliens, art. 16, in Recent Codification of the Law of State Responsibility For Injury To Aliens 131 (1974) [hereinafter Recent Codification].

7. Draft Convention on the International Responsibility of States For Injuries To Aliens, art. 18, Explanatory Note, in Recent Codification, supra note 6, at 258.

8. L. Oppenheim, International Law 559 (H. Lauterpacht 8th ed. 1955).

9. Mosler, The International Society As A Legal Community, 140 R.C.A.D.I. 176 (1974). See generally Vitányi, International Responsibility of States For Their Administration of Justice, 22 Netherlands Int'l L. Rev. 131 (1975).

attributable to the PDRM itself,^{10/} which must bear complete responsibility for them.

III. THE TREATMENT OF BIS PERSONNEL BY AGENTS AND ORGANS OF THE PDRM WAS IN CONTRAVENTION OF INTERNATIONAL LAW.

A. The PDRM is bound by the treaty obligations of the Republic of Meridion.

As long as a State continues to exist, so do its treaty relationships.^{11/} A mere change of government does not, in itself, release the new government from treaty obligations undertaken by the former government. The new government must expressly terminate or suspend a treaty if it does not wish to be bound thereby.^{12/}

The State of Meridion has never ceased to exist, as evidenced, for example, by its continued membership in the United Nations. Although the PDRM did resign from the Septentrionese Confederation of States, it has not withdrawn from any of the multilateral treaties to which the Republic of Meridion was a party. The PDRM is therefore bound by all such Meridionese treaty obligations.

B. The MLA's treatment of BIS personnel during the revolution violated international law.

1. MLA forces arbitrarily arrested, detained, and held incommunicado, BIS employees and volunteers.

In September of 1976, MLA forces seized, forcibly detained, and held incommunicado twenty BIS employees and volunteers. These actions contravene

10. Restatement (Second) of Foreign Relations Law of the United States §169 Comment a (1965).

11. I. Brownlie, Principles of Public International Law 496 (1966).

12. O. Udokang, Succession of New States to International Treaties 225 (1972);
2 D. O'Connell, State Succession in Municipal Law and International Law 1-24 (1967).

provisions of the International Covenant on Civil and Political Rights,^{13/} which Meridion signed and ratified, and which entered into force in the early months of 1976. Article 9, paragraph 1, specifically states that "No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."^{14/} The compromis discloses no compliance by the MLA forces with legal procedures. On the contrary, the arrests and detention took place during an MLA killing spree that left thirty-five hospital patients dead.

By holding BIS personnel incommunicado, the MLA insurgents prevented those arrested from communicating with a judicial officer. This constitutes a violation of Article 9, paragraph 3, which requires that a person arrested be brought before a judge and not be detained if his appearance for trial can be otherwise guaranteed, and of Article 9, paragraph 4, which gives the arrested person the right to a prompt judicial determination of the lawfulness of his detention. Article 9, paragraph 5, entitles the victims of such unlawful arrest and detention to compensation.

2. MLA forces caused many deaths and injuries to BIS personnel during the advance on the capital.

In early 1977, MLA forces began their advance on the Meridionese capital, capturing BIS facilities along the way and killing or injuring many BIS employees, despite the fact that BIS personnel were non-combatants. Such conduct is a flagrant violation of Article 3 of all four Geneva Conventions of 1949. Article 3 declares that "(1) Persons taking no active part in the hostilities . . . shall, in all circumstances, be treated humanely" and goes on to specifically

13. International Covenant on Civil and Political Rights, opened for signature December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (entered into force March 23, 1976).

14. Id.

prohibit "(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture."^{15/}

3. MLA forces engaged in torture and summary executions at Polis.

During the 1977 advance, an MLA division overran a BIS school at Polis, took its director prisoner, and summarily shot three staff members. The "uniformed militia" and "People's Court" involved in the incidents at Polis can be assumed to have been acting under MLA auspices, since the actions they took were to enforce MLA Decree 181.

Severe beatings and electric shock, such as were administered to the BIS staff at Polis, constitute torture, which is prohibited under Article 3(a) of the Geneva Conventions and Article 7 of the Civil and Political Rights covenant.^{16/}

Summary executions are likewise condemned by both treaties. Article 3(d) of the Geneva Conventions prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court"^{17/} Article 6 of the Civil and Political Rights covenant permits the sentence of death to be carried out only "pursuant to a final judgment rendered by a competent court."^{18/} The so-called "People's Court" was neither regularly constituted, nor competent to provide the defendants with proper judicial guarantees; rather it was a transparent attempt to give murder a semblance of judicial legitimacy.

15. Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, 75 U.N.T.S. 287 (entered into force October 21, 1950).

16. See generally Muhammad, Guarantees for Accused Persons Under the U.N. Human Rights Covenants, 20 Indian J. Int'l L. 177 (1980).

17. Geneva Conventions, supra note 15 (emphasis added).

18. International Covenant on Civil and Political Rights, supra note 13, at 53 (emphasis added).

C. The treatment accorded BIS defendants by the People's Revolutionary Court constituted a denial of justice under international law.

1. The Court denied the defendants counsel of their own choosing.

Holding that the counsel selected by the defendants were "security risks," the People's Revolutionary Court appointed substitute counsel to represent the senior BIS officials who were tried in September of 1977. This is a direct violation of Article 14, paragraph 3, of the International Covenant on Civil and Political Rights, which states that a criminal defendant is entitled to communicate with, and be defended by, counsel of his own choosing.^{19/}

2. The Court denied the defendants the opportunity to cross-examine witnesses against them.

In order to "protect the identities of confidential sources," the Court admitted the testimony of certain witnesses against the defendant in written form only. This denied each defendant his right, under Article 14, paragraph 3(e), of the Civil and Political Rights covenant "[t]o examine, or have examined, the witnesses against him"^{20/}

3. The sentences handed down by the Court constituted cruel and inhuman punishment.

The Court sentenced the defendants, several of whom were sixty-five years of age or older, to terms ranging from ten to thirty years at hard labor. These sentences are cruel and inhuman punishment and, as such, violate Articles 7 and 10 of the Civil and Political Rights covenant, and Articles 3(1)(a) and 3(1)(d) of the Geneva Conventions.

19. See generally A. Freeman, The International Responsibility of States for Denial of Justice 1 passim (1938).

20. International Covenant on Civil and Political Rights, supra note 13 at 54.

4. The defendants were deprived of their right to appeal.

Since the court-appointed counsel were the only counsel permitted the defendants, the failure of counsel to file timely appeals on behalf of the defendants effectively deprived them of their rights under Article 14, paragraph 5, of the Civil and Political Rights covenant, which says that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."^{21/}

5. The PDRM could not derogate from its obligations under the International Covenant on Civil and Political Rights.

Despite the official declaration by the PDRM of a state of emergency in Revolutionary Order No. 1, the PDRM was not released from its obligations under the Civil and Political Rights covenant by the derogation provisions of Article 4. Article 4, paragraph 1, stresses that such a derogation may not be inconsistent with the State's other obligations under international law. The Geneva Conventions create such obligations. Moreover, derogation may only be "to the extent strictly required by the exigencies of the situation."^{22/} The officials of a charitable organization posed no threat to Meridionese national security, so there is no reason why the People's Revolutionary Court should be excused from its obligation to provide them "all the judicial guarantees which are recognized as indispensable by civilized peoples."^{23/}

IV. THE PDRM VIOLATED ITS INTERNATIONAL LEGAL OBLIGATIONS BY CAUSING THE MASS MIGRATION OF PEOPLE FROM MERIDION TO SEPTENTRION.

A. The PDRM has an unavoidable duty to refrain from conduct which would injure another state.

1. A State has a duty to refrain from causing injury to other States.

As members of the United Nations, Septentrion and Meridion are both bound by

21. Id.

22. Id. at art. 4, para. 1.

23. Geneva Conventions, supra note 15, art. 3.

Article 2 of the Charter, which requires, inter alia, that member States act in accordance with the principle of the sovereign equality of all nations of the world community.^{24/} Observance of this principle requires respect for the rights of all States to live in peace, without the threat of unprovoked injury. It is equally well settled under customary international law that States "are responsible for conditions in their territory which lead to the infliction of harm on other States."^{25/}

2. The right of a State to wage civil war does not excuse that State from its duty to refrain from injuring another State, or reduce its liability for causing such injury.

The Kingdom of Septentrion does not question the right of the people of Meridion to determine their own form of government. This is among the most basic of political rights guaranteed by customary and conventional international law.^{26/} It is also acknowledged that "the law of nations does not treat civil wars as illegal."^{27/}

A legal right to choose a course of action, however, does not absolve a State from responsibility for the consequences of the exercise of that right.^{28/} A policy or action "not illegal under international law, in itself, may become so if it is used as a means of evading a duty that otherwise exists under

24. U.N. Charter, art. 2, para. 1.

25. I. Brownlie, supra note 9, at 383.

26. Paust and Blaustein, War Crimes Jurisdiction and Due Process: The Bangladesh Experience, 11 Vand. J. Transnat'l L. 1, at 18 (1978). See generally International Covenant on Civil and Political Rights, supra note 11; U.N. Charter, art. 1, para. 2.

27. Fryer, Applicability of International Law to Internal Armed Conflicts: Old Problems, Current Endeavors, 11 Int'l Law. 567 n.2 (1977).

28. See Iluyomade, The Scope and Content of a Complaint of Abuse of Right in International Law, 16 Harv. Int'l L. J. 47 (1975).

international law."^{29/}

B. The PDRM is responsible under international law for the migration of Meridionese nationals to the Kingdom of Septentrion.

1. The PDRM is responsible for the inevitable and foreseeable consequence of civil war: the flight of civilians.

The waging of war normally results in some measure of civilian migration. Individuals and families seek to escape the uncertainties inherent in times of war or civil strife. By waging war against the established government of the Republic of Meridion, the MLA caused a migration of civilians for which the PDRM must bear responsibility.^{30/}

2. The persistent violations of the laws of war by the MLA accelerated and intensified the mass migration of Meridionese to Septentrion.

The MLA violated the rights of many individuals engaged in neutral, humanitarian efforts in Meridion. The MLA also breached the express provisions of Article 3 of the Geneva Conventions of 1949 by murdering thirty-five hospitalized soldiers of the Republic of Meridion.^{31/} Such conduct is repugnant by any civilized standard, notwithstanding conventional international law.

As the MLA forces advanced upon the capital, some 41,000 civilians fled the country. These individuals, regardless of their political philosophies, preferred the uncertainties of self-inflicted exile to the risks of being ruled by inhumane, self-proclaimed "liberators."

The MLA's blatant disregard for basic human rights turned the inevitable flow of persons choosing to flee their homeland into a flood of migrants

29. Johnson, Refugees, Departees and Illegal Migrants, 9 Sydney L. Rev. 11, at 17 (1980); Accord G. Goodwin-Gill, International Law and the Movement of Persons Between States at 202 (1978); Williams, Denationalization, 8 B.Y.I.L. 45 (1927).

30. See Paust, supra note 26, at 9 and n.29.

31. Geneva Conventions, supra note 13, art. 3, para. 1(a).

destined for Septentrion.

3. Subsequent actions of the PDRM created a situation in which the migration became permanent.

After gaining complete control of Meridion, the revolutionists made it highly unlikely that those who had fled would voluntarily return to their homeland. What might have been a temporary exodus to escape the uncertainties of war became a permanent migration of tens of thousands of Meridionese.

Revolutionary Order No. 1, issued on June 19, 1977, declared that all those who had fled were counter-revolutionary "enemies of the people."^{32/} In view of the brutal record of the revolutionary courts, it is doubtful that any of those who had fled would voluntarily return to contest this arbitrary exercise of governmental power. The Order further declared that these enemies might be penalized by the loss of their citizenship. This is a clear violation of general principles of international law and Article 15 of the Civil and Political Rights covenant, which prohibits the retroactive imposition of penalties more harsh than those applicable at the time the offense was committed.^{33/}

The Government of the PDRM subsequently denationalized a number of those who had fled Meridion. This was accomplished without observing basic procedural safeguards. None of those who lost their citizenship were in Meridionese territory. No notice was served upon them abroad. No opportunity to be heard was afforded them. Such conduct violates the norms of customary international law, as well as the obligations of Meridion under the Civil and Political Rights covenant.^{34/}

32. Compromis at 5.

33. International Covenant on Civil and Political Rights, supra note 13, art. 15, para. 1 (this is not one of the articles from which art. 4, para. 2 allows derogation).

34. International Covenant on Civil and Political Rights, supra note 13, art. 2, para. 1-3; art. 12; art. 14; art. 15.

In sum, the Meridionese government is liable under international law for causing the original flight of civilians, for exacerbating that exodus, and for making it practically impossible for anyone to return.

- C. The mass migration of Meridionese nationals to the Kingdom of Septentrion has caused injury to Septentrion by threatening its public order and internal security and by sapping its financial and human resources.

In the first six months of 1977, Septentrion was faced with an influx of 38,000 Meridionese nationals, all of whom were without travel documents. The Septentrionese government had to restrict the movement and activities of the migrants in order to prevent them from adversely affecting the national economy, and to ensure that terrorists and criminals were not surreptitiously entering the country on the pretext of seeking refuge. Threatening the public order and internal security of Septentrion in this manner violates international peace.

Since 1977, the Government of Septentrion has spent vast amounts of time and financial resources to feed and shelter the migrants, to establish documentation procedures, and to provide for relocation. These resources belong to the citizens and taxpayers of Septentrion. The additional expenditures are siphoning off food, shelter, and services from the needy of Septentrion.

- D. The PDRM has compounded the injury to Septentrion by breaching its duty to repatriate its own nationals.

It is the undisputed duty of every State to receive back its own nationals.^{35/}

This duty is not to be construed in a technical fashion which deprives it of all meaning. It cannot mean that a State can evade this duty by the simple process of denationalization; in other words, it cannot evade a duty by the abuse of right. Nor can it mean, it is submitted, that a State can evade the

35. G. Goodwin-Gill, supra note 29, at 202, and n.5; P. Weis, Nationality and Statelessness in International Law 123 and n. 167 (2d ed. 1979).

duty by the creation of internal conditions which make [re-
turn] impossible Otherwise, the duty to receive back
is bereft of all real significance.^{36/}

By revoking the citizenship of some of its nationals living in Septentrion, the PDRM has sought to evade its duty to accept their reconduction. Similarly, by labeling all of the migrants "enemies of the people," the PDRM has created an arbitrary and equally effective bar to their return.

This intentional evasion by the PDRM of its international duties has compounded Septentrion's burdens by making it more difficult to return or resettle those Meridionese who are still in temporary resettlement camps.

V. SEPTENTRION'S ACTIONS IN DETAINING MERIDIONESE PERSONS IN SEPTENTRION, IN DECLINING TO RESETTLE DETAINEES INTO SEPTENTRIONESE SOCIETY, AND IN FORCIBLY RETURNING OTHERS TO MERIDION WERE CONSISTENT WITH INTERNATIONAL LAW.

A. Septentrion was under no duty under international law to resettle the Meridionese into Septentrionese society.

The reception of aliens by a State is a matter of discretion.^{37/} Every State, by reason of its territorial sovereignty, has the right to exclude aliens from the whole, or any part, of its territory.^{38/} The absence of any duty to admit aliens is supported by an examination of state immigration laws, which shows that scarcely any State unconditionally admits aliens.^{39/}

No individual has the right to demand asylum. According to traditional international law, the so-called "right of asylum" is not a right of the alien, since individuals are not subjects of international law. The right of asylum, therefore, refers to the discretionary right of the State to grant asylum.^{40/}

36. Jennings, Some International Law Aspects of the Refugee Question 20 B.Y.I.L. 98, at 112 (1939) (footnote omitted).

37. L. Oppenheim, supra note 8, at 675.

38. Id. at 676.

39. J. Starke, An Introduction to International Law 345 (7th ed. 1972).

40. L. Oppenheim, supra note 8, at 617.

Consistent with the principle of territorial sovereignty, every State has the right to limit, by international agreement, its absolute discretion in admitting aliens.^{41/} However, Septentrion is not a party to any treaty which limits its right to refuse admission to aliens. The Convention Relating to the Status of Refugees does not regulate the admission of aliens.^{42/} It only purports to regulate the status of refugees once they are in the country of asylum.^{43/} The Convention, therefore, in no way obliges Septentrion to admit refugees or persons claiming to be refugees.

Since no State is obliged under international law to admit aliens into its territory, it follows that each State may attach conditions to any right of entry it may bestow upon an alien.

The admission of the Meridionese into temporary resettlement camps was made subject to the condition that they eventually be resettled in other countries. In admitting them under this condition, Septentrion in no way became obligated to resettle the Meridionese into Septentrionese society.

The United Nations High Commissioner for Refugees has urged that, in the case of a mass influx of persons seeking asylum, States should, whenever possible, grant these persons temporary asylum rather than repel them at the border.^{44/} The Commissioner also noted the extensive practice of granting temporary refuge in such situations.^{45/}

41. Id. at 675.

42. Convention Relating to the Status of Refugees, 189 U.N.T.S. 137 (entered into force April 22, 1954).

43. Weis, The Concept of the Refugee in International Law, 87 J. Du Droit Int'l 940 (1960).

44. Addendum to the Report of the United Nations High Commissioner for Refugees, 35 U.N. GAOR, Supp. (No. 12A) 16, U.N. Doc. A/35/12/Add.1 (1980) [hereinafter cited as 1980 Addendum to UNHCR Rep.].

45. Id. at 17.

Temporary refuge is provided for in Article 3, paragraph 3 of the United Nations Declaration on Territorial Asylum.^{46/} When a State is faced with a mass influx of persons, it may not find it possible to grant permanent asylum. Rather than refuse entry, Article 3, paragraph 3 provides that a State may grant provisional asylum until such time as other States may be found for permanent resettlement.^{47/} The State is under no duty to resettle the people to whom it has granted temporary asylum. Article 3 itself explicitly provides that a State may grant asylum subject to "such conditions as it may deem appropriate."^{48/}

Consistent with its right to subject the admission of aliens to certain conditions, the Government of Septentrion offered the Meridionese temporary asylum, until such time as they could resettle in other countries. This humanitarian act on the part of Septentrion did not impose an obligation under international law to resettle the Meridionese into Septentrionese society.

- B. Septentrion's treatment of the Meridionese in the temporary resettlement camps was appropriate under international law.
 - 1. Septentrion cannot be charged with violations of international human rights provisions.
 - a. The Universal Declaration of Human Rights is not legally binding on Septentrion.

The Universal Declaration of Human Rights^{49/} is not a legally binding document.^{50/} It is not a treaty, and is not intended to have binding force,

46. Declaration on Territorial Asylum, G.A. Res. 2312, 22 U.N. GAOR Supp. (No. 16) 81, U.N. Doc. A/6716 (1967).

47. Id.

48. Id.

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

50. Oppenheim, supra note 7, at 745.

as evidenced by the debates which preceded the adoption of the text.^{51/} Present State practice indicates that the Declaration does not have the force of customary international law.

b. The International Covenant on Civil and Political Rights is not legally binding on Septentrion.

Septentrion has not ratified the International Covenant on Civil and Political Rights,^{52/} and thus is not directly bound by its terms. Most of the covenant's provisions are subject to derogation and are not, therefore, constitutive of customary international law.^{53/}

c. The International Covenant on Social, Economic and Cultural Rights is not legally binding on Septentrion.

Septentrion has not ratified the International Covenant on Social, Economic, and Cultural Rights,^{54/} and thus is not bound by its terms. It has been ratified by fewer than half the members of the United Nations,^{55/} and present State practice does not indicate that it has the force of law.

2. The treatment of Meridionese in the resettlement camps did not violate the Convention on the Status of Refugees.

a. The Meridionese are not entitled to protection under the Convention, as they are not "present" in Septentrion for the purposes of the Convention.

A grant of temporary asylum does not legally constitute an entry, even though the alien is physically present in the territory. The alien's legal

51. See L. Del Russo, International Protection of Human Rights 37 (1971).

52. International Covenant on Civil and Political Rights, supra note 13.

53. North Sea Continental Shelf Cases 1969 I.C.J. 38-9.

54. International Covenant on Social, Economic, and Cultural Rights, opened for signature December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (entered into force January 3, 1976).

55. Multilateral Treaties in Respect of Which the Secretary-General Performs Depositing Functions, U.N. Doc. ST/LEG/SER.D/13 (list of signatures, ratifications, accessions, etc. as of 31 December 1979).

status is such that he is treated as if he were stopped at the border. The Convention deals with the rights of refugees after entry. Since the Meridionese have not "entered" Septentrion, they are not entitled to the protection of the Convention.^{56/}

b. The Meridionese are not refugees as defined by the Convention and are not entitled to its protection.

(1) They were not refugees as defined by the Convention when they left Meridion.

To qualify as a refugee under Article 1 of the Convention, an individual must have a well-founded fear of persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion.^{57/}

The Meridionese who left for economic reasons are not refugees. The Convention does not recognize economic deprivation, in and of itself, as conveying refugee status. There is no evidence that the deterioration of their economic situation was the result of persecution owing to any of the reasons enumerated in the Convention.

The Meridionese who had their citizenship revoked after their departure are not refugees, as there is no evidence that they left due to any form of persecution.

The Meridionese who were requested to appear at police stations to give an account of whether or not they had engaged in counter-revolutionary activities are not refugees. Meridion was under a state of emergency. Under such conditions, civilians may be asked to appear before authorities to answer questions about their activities. There is no evidence that persons of Meridionese nationality, other than BIS personnel and soldiers of the Republic, were targets of the MLA. Furthermore, the fact that they were called in for questioning does

56. Cf. Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 215 (1952) (This case illustrates similar United States practice).

57. Convention Relating to the Status of Refugees, supra note 42.

not lead to the conclusion that they were the object of any form of persecution.

- (2) Nothing has occurred since their departure which has altered their status.

The Revolutionary Order issued by the new Government of Meridion declares that all people fleeing the shores of Meridion are "enemies of the People" and that every enemy of the revolution shall be eliminated. All Meridionese in the resettlement camps are affected by this order. While it would understandably cause the Meridionese to fear returning to Meridion, it does not change their status with respect to the Convention.

The Meridionese who fled have been declared "enemies of the people" solely because of their flight. These people did not flee out of fear of persecution owing to any reason enumerated by Article 1 of the Convention. Their fear of returning does not bring them under the protection of the Convention.

- (3) The treatment of the Meridionese was not in violation of customary international law.

There is no developed customary law with respect to treatment of persons under temporary refuge. This was recognized in a report of the United Nations High Commissioner for Refugees, which stated the need to define the nature, functions, and implications of the grant of temporary refuge.^{58/} The report went on to add that the practice of temporary refuge had not been sufficiently examined and that one of the areas that should be further studied was the status of refugees pending permanent resettlement.^{59/}

- (4) The treatment of the Meridionese in the resettlement camps was consistent with elementary considerations of humanity.

The mass influx of Meridionese put a serious strain on the resources of

58. 1980 Addendum to UNHCR Rep., supra note 44, sec. A, at 17.

59. Id.

Septentrion. However, this did not prevent Septentrion from providing them with the basic necessities of life, such as food, shelter and satisfactory health and sanitary facilities. "Elementary considerations of humanity" require no more.^{60/}

C. The actions of the Septentrionese coastal service in intercepting and escorting Meridionese vessels to Meridionese waters were not in violation of international law.

1. The interception on the high seas was not in violation of international law.

Article 12 of the Convention on the High Seas embodies the customary rule for rescue at sea.^{61/} A State has a duty to require the masters of vessels sailing under its flag to render assistance to any person found at sea in danger of being lost, and to proceed with all possible speed to the rescue of persons in distress if made aware of their need of assistance.^{62/}

Some 3,000 Meridionese were lost at sea in their attempt to reach Septentrion. Septentrion had both a moral and legal duty to prevent any further loss of life. The coastal service was, therefore, ordered to inspect all Meridionese vessels it encountered, and to ensure their safety. The interception of Meridionese vessels on the high seas was thus consistent with international law.

2. Escorting the Meridionese back into Meridionese waters was not in violation of international law.

a. This action was consistent with the duty to rescue.

The first wave of Meridionese to land in Septentrion seriously strained the ability of Septentrion to provide appropriate facilities. In fairness to the people already in the camps, who were living under adequate, if less than ideal,

60. Corfu Channel Case (United Kingdom v. Albania), 1949 I.C.J. 61.

61. Convention on the High Seas, April 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (entered into force September 30, 1962).

62. Id. art. 12.

conditions, the government decided that it could no longer grant temporary refuge, except where absolutely required.

When the coastal service of Septentrion encountered the Meridionese vessels, it was under an obligation to ensure their safety. Those people in boats which were incapable of making the trip were taken aboard coastal service vessels and brought to Septentrion where they were given temporary refuge. This was necessary to meet the duty to rescue at sea.

Those in boats which were somewhat more seaworthy were not granted temporary asylum since it was not necessary to do so to ensure their safety. However, they could not be allowed to continue on what would probably have been a most dangerous and perhaps suicidal voyage.^{63/} Consistent with its duty to rescue, Septentrionese coastal service vessels safely escorted the Meridionese vessels back to Meridionese waters.

b. This action did not violate the principle of non-refoulement.

The Meridionese were not returned to the frontiers of a territory where their freedom or lives were threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.^{64/} Thus, Septentrion did not violate the principle of non-refoulement.

Even if the Meridionese might ultimately be threatened on account of one of the enumerated reasons, return is permitted in exceptional circumstances.^{65/} The prevention of loss of life at sea is such a circumstance.

63. 1980 Addendum to UNHCR Rep., supra note 7, Sec. 5, at 17.

64. See argument at section (V)(B)(2)(b)(1) of this memorial, supra at 17.

65. G. Goodwin-Gill, supra note 29, at 141.

CONCLUSION AND REQUEST FOR RELIEF

The Kingdom of Septentrion has consistently acted in accordance with international law, while the PDRM and its agents have repeatedly violated human rights. The Kingdom of Septentrion has provided a significant number of displaced Meridionese with the basic needs of human existence and with temporary refuge from tyranny, while the PDRM has conducted itself in a highly reprehensible manner, claiming all the rights of States while neglecting its duties as a member of the international community.

Therefore, the Kingdom of Septentrion respectfully requests that the Court:

- (1) DECLARE that the Government of the Kingdom of Septentrion has standing to espouse the claims of BIS personnel and their families;
- (2) DECLARE that the PDRM is responsible under international law for the treatment of BIS personnel by the MLA and the People's Revolutionary Court;
- (3) DECLARE that the treatment of BIS personnel by the agents and organs of the PDRM violated international law;
- (4) DECLARE that the PDRM violated its international legal obligations by causing the mass migration of people from Meridion to Septentrion;
- (5) DECLARE that the actions of the Kingdom of Septentrion, with respect to the detention of Meridionese persons in Septentrion, and the return of others to Meridion, were consistent with international law;
- (6) ORDER that the PDRM shall immediately repatriate all BIS personnel being held in Meridion;
- (7) ORDER that the PDRM compensate the Kingdom of Septentrion for the injuries suffered by BIS personnel and their families in an amount this Court deems appropriate;

- (8) ORDER that the PDRM compensate the Kingdom of Septentrion for the costs of housing and feeding the Meridionese people in temporary resettlement camps.

Respectfully submitted,

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