THE 1982 PHILIP C. JESSUP INTERNATIONAL LAW

MOOT COURT COMPETITION

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IN THE INTERNATIONAL COURT OF JUSTICE

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February 1982

THE KINGDOM OF SEPTENTRION

Applicant

v.

THE PEOPLE'S DEMOCRATIC REPUBLIC

OF MERIDION

Respondent

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# MEMORIAL FOR THE RESPONDENT

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TEAM #47

Agents for the People's Democratic Republic of Meridion

Linda A. Wells
Allen C. Wasserman
Stephen Ward Smith
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## 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 certain claims in this case are improperly before this Court because of the non-exhaustion of local remedies.

II

Whether Septentrion has standing to espouse a claim under international law on behalf of Meridionese nationals.

III

Whether Meridion is responsible for acts committed during the civil war by persons other than members of the Meridionese Liberation Army.

IV

Whether the treatment of Benefactors International Society personnel by the Meridionese Liberation Army was in conformity with Meridion's obligations under international law.

V

Whether Meridion's actions with respect to the mass migration of people from Meridion to Septentrion conformed with international law.

VI

Whether 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.

VII

Whether the Court should grant the relief requested by Septentrion.

## SUMMARY OF ARGUMENT

Claims for injuries at the hands of the Meridionese Liberation Army [hereinafter MLA] or by the People's Democratic Republic of Meridion [hereinafter PDRM] are not properly before this Court unless it is shown that local remedies have been exhausted.

Meridion is the only State that may espouse claims arising from treatment accorded its own nationals; Septentrion may not do so.

The PDRM acknowledges its responsibility for actions of the MLA during the period of civil disorder, but the PDRM is not responsible for the acts of private persons who are alleged to have injured personnel of Benefactors International Society, Ltd. [hereinafter BIS].

Meridion's treatment of BIS personnel was in full conformity with its international legal obligations. Meridion cannot be held liable for injuries to individuals who, in choosing to remain in Meridion during the civil war, assumed the risk of injury. The MLA treatment of BIS personnel during the conflict conformed, in any case, with the applicable international standards. Even if Meridion's acts fell below the applicable legal standard, there should be no liability for these wrongs in the circumstances of a national struggle for self-determination.

In connection with the mass migration of Meridionese to Septentrion, Meridion violated none of its obligations under international law. Meridion is not responsible for the emigrants' decision to flee. In fact, Meridion had an affirmative duty not to stop the migration. Any responsibility for causing the mass migration that might be ascribed to Meridion must be shared equally by Septentrion.

Septentrion's treatment of the emigrants violated international law, as did the Septentrionese interference with the emigrants' flight. The conditions in the "temporary resettlement camps" that violate international standards have continued for an inexcusably long period. The Septentrionese Coastal Service's actions in turning back the Meridionese boats violated the rights of freedom of navigation and freedom to leave one's own country.

In adjudicating the claims brought in this case of State responsibility for injuries to aliens, the Court should apply the standards of international law in a form that is meaningful in the context of today's international political, social, cultural, and economic realities.

## ARGUMENT AND AUTHORITIES

### I. CERTAIN CLAIMS IN THIS CASE ARE NOT PROPERLY BEFORE THIS COURT FOR DECISION

#### A. The exhaustion of local remedies is a necessary precondition to adjudication in this Court.

The claims on behalf of Meridionese and Septentrionese BIS personnel are not suitable for adjudication by this Court at this time, as there is no indication that any of the individuals in question have sought to pursue any of the remedies available in the Meridionese judicial system.

> The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law; the rule has been generally observed in cases in which a State has adopted the cause of its national whose rights are claimed to have been disregarded in another State in violation of international law.[1]

"The [International Court of Justice], whose function it is to decide, in accordance with international law, such disputes as are submitted to it,"[2] does not sit in review of cases for which the rule of decision is domestic law. Wrongs committed within Meridion are prima facie subjects of Meridionese law. International law may not be invoked as the remedy for such wrongs unless it is shown that there is no adequate local recourse or that local remedies have been exhausted.[3] Since there is no indication in the record that these criteria have been met, this Court lacks subject matter jurisdiction of the claims put forward by Septentrion on behalf of these claimants.

#### B. Meridion is the only State that can espouse the claims of Meridionese nationals under international law.

It is a general principle of international law that a State has standing to

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1. Interhandel Case (Switzerland v. United States), 1959 I.C.J. 6, 27.

2. Statute of the International Court of Justice art. 38.

3. T. Haesler, The Exhaustion of Local Remedies in the Case Law of International Courts and Tribunals 27-76 (1968); C. de Visscher, Aspects Récents du Droit Procédural de la Cour Internationale de Justice 145 ff. (1966).

espouse only the claim of a person "(a) having the nationality of the State by which it is put forward, and (b) not having the nationality of the State against whom it is put forward."[4/]

Septentrion's purported espousal of the claims of Meridionese BIS personnel against Meridion meets neither of these tests, and must therefore fail for lack of standing (locus standi).[5/] Not only do the Meridionese claimants lack Septentrionese nationality, but they also have the nationality of the State against which Septentrion is attempting to assert the claim.

## II. THE PDRM IS NOT RESPONSIBLE FOR ACTS COMMITTED DURING THE CIVIL WAR BY PERSONS OTHER THAN MLA SOLDIERS AND THEIR AGENTS.

### A. The PDRM acknowledges its responsibility for actions of the MLA during the period of civil disorder.

The PDRM, a government that came into power as the result of a successful revolutionary struggle, takes responsibility for all acts of its predecessor group, as customary international law requires.[6/] It will be shown, however, that these acts create no liability under internatonal law.

### B. The PDRM is not responsible for acts committed by persons wearing MLA uniforms who were not MLA soldiers.

There is no strict liability for injury to aliens in international law. The PDRM can only be held responsible for those wrongs committed by private persons for which some form of negligence on the part of the State can be shown. In the case of non-MLA actors, the State's duty is to exercise due diligence to prevent illegal acts, and to apprehend and punish guilty individuals once the deeds are done. "Due diligence" means that the government must "cause such laws to be

4. L. Oppenheim, 1 International Law 348 (H. Lauterpacht 8th ed. 1955).

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

6. C. Amerasinghe, Studies in International Law 238-244 (1969).

enacted as would enable the administrative and judicial authorities effectively to prevent or repress the criminal act."[7]

The MLA did not exercise any semblance of governmental control over the areas of Meridion in which the alleged MLA members overran a BIS hospital and seized and forcibly detained twenty BIS employees and volunteers.[8] The lack of governmental control means that the MLA and PDRM have no "due diligence" burden to meet with respect to that area and time. The hostile acts of these soldiers, therefore, cannot be attributed to the PDRM if the soldiers were not MLA members.

The PDRM expects that a fact-finding inquiry will be held to establish whether these soldiers were or were not clearly tied to the MLA. In any event, the burden of proving that persons wearing MLA uniforms were actually MLA members rests with Septentrion.[9]

The PDRM is not responsible for acts committed by private persons against the BIS personnel. It is conceivable that agents of the former Republic of Meridion perpetrated this incident for the purpose of discrediting the popular revolutionary movement.

## III. MERIDION'S TREATMENT OF BIS PERSONNEL WAS IN FULL CONFORMITY WITH ITS INTERNATIONAL LEGAL OBLIGATIONS.

### A. Meridion cannot be held liable for injuries to Septentrionese nationals who, by choosing to remain in Meridion during the civil war, assumed the risk of being injured.

A state of emergency was declared in 1970, and has never been rescinded.

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7. Lauterpacht, Revolutionary Activities by Private Persons Against Foreign States, 22 Am. J. Int'l L. 105, 128 (1928).

8. Clarifications of the Compromis 82.

9. S. Rosenne, 2 Law and Practice of the International Court 526-27 (1965); D. Sandifer, Evidence Before International Tribunals 124, 127, 130 (1975).

Revolutionary Order Number 1 of 1977 reiterated that there was a state of martial law in Meridion. These decrees were sufficient notice to foreign nationals that the State of Meridion could no longer guarantee their protection. Those persons who elected to remain in Meridion assumed the risks of any harm suffered as an incidental result of the civil war.

The international responsibility of a State is confined to using all means at its disposal to prevent harms to foreign persons,[10] "and this responsibility is adequately discharged by simply doing so, completely irrespective of the adequacy of the measures taken."[11] Meridion can be held responsible only for harms in which fault is shown, or where it failed to use due diligence[12] to prevent the harm. The warnings its governments issued were not attempts to evade this standard. Rather, they were warnings of an objectively verifiable state of affairs. Harms resulting from the willful disregard of these warnings must be charged to the only parties still in a position to take action to avoid them. Because the Septentrionese BIS employees did not leave Meridion, when they knew that to stay meant exposure to civil turmoil that the Meridionese governments could not control, they must bear the risks they failed to mitigate. The PDRM is not responsible for these harms under international law.

B. MLA treatment of BIS personnel during the conflict was in conformity with the applicable international standards.

1. Article 3 of the Geneva Conventions of 1949, and Protocol II, are the only conventional laws of war even potentially applicable to the Meridionese conflict.

"The international legal rules governing combat operations . . . have

10. Alabama Claims Arbitration (United States v. Great Britain) (1871), as reprinted in 6 J. Moore, A Digest of International Law §1050 (1906).

11. M. Garcia-Mora, International Responsibility for Hostile Acts of Private Persons Against Foreign States 31 (1962).

12. The St. Albans Claims (United States v. Great Britain) (1871), as reprinted in 4 J. Moore, A Digest of International Arbitrations 4042-54 (1898).

traditionally been held to apply only to international armed conflict."[13] Common Article 3 of the Geneva Conventions and the subsequent Protocol II Relating to the Protection of Victims of Non-international Armed Conflicts[14] comprise the "only portion of the law of war universally recognized as applicable to internal conflicts."[15]

2. Neither the Geneva Conventions of 1949 nor the Protocol of 1977 were applicable to the internal armed conflict in Meridion.

Article 3 of the Geneva Conventions of 1949 attempts to ensure minimum protection, in armed conflicts not of an international character, to persons "taking no active part in the hostilities."[16] Protocol II of 1977[17] clarifies the intended scope of application of the provision to persons "who do not take a direct part [in hostilities]."[18] Although they did not literally take up arms against the revolutionary forces, the BIS personnel subjected to allegedly inhumane treatment nevertheless actively aided and abetted the central government's military authorities, and thereby directly participated in the hostilities. They therefore do not fall under the conventional provisions for treatment of non-participants in civil conflicts.

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13. Farer, Humanitarian Law and Armed Conflicts: Toward the Definition of "International Armed Conflict", 71 Colum. L. Rev. 37, 40 (1971).

14. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, opened for signature August 12, 1949, 75 U.N.T.S. 287, 6 U.S.T. 3516 (entered into force October 21, 1950); Protocol (II) Additional to the Geneva Conventions of 1949 Relating to the Protection of Victims of Non-International Armed Conflicts, opened for signature December 12, 1977, U.N. Doc. A/32/144 (1977), reprinted in 16 Int'l Legal Materials 1442 (1977).

15. J. Bond, The Rules of Riot 81 (1974).

16. Geneva Conventions art. 3, supra note 14.

17. Protocol II, supra note 14. (Protocol II was not opened for signature until December of 1977, after the events at issue occurred, and is therefore not binding in this case. It is valuable, however, as an indication of the scope of Article 3.)

18. Id. art. 4, para. 1.

Shortly after the issuance of Decree Number 181 in January 1976, a meeting of top BIS management in Septentrion resulted in the decision to "explicitly disregard (certain) sections of Decree Number 181."[19] This is adequate proof of the hostile attitude of BIS toward the Meridionese liberation forces and a clear indication of their desire to actively subvert the revolutionary movement.

In the 1976 hospital incident, the MLA had reasonable grounds to conclude that BIS personnel, who were harboring soldiers of a neo-colonialist regime, were active participants in the unsuccessful counter-revolutionary struggle.

In the capture of the school at Polis, the director admitted that the school had been used as a hiding place for local officials of the central government. This was sufficient reason for the MLA to recognize the BIS involvement as direct and active.

The active participation of BIS personnel in the armed conflict precludes Septentrion from invoking Article 3 of the Geneva Conventions of 1949.

3. Meridion fulfilled its only duty during the conflict, the duty to respect fundamental human rights.

As the laws of war are inapplicable, Meridion was bound only by the constant duty of all States to refrain from unnecessary infringement of human rights. Meridion complied with this obligation.

As the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights affirm,[20] it is the duty of all States to promote respect for, and observance of, human rights and fundamental freedoms. Derogation from that obligation is lawful only in time of public emergency and

19. Compromis at 5.

20. Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/810, at 71 (1948); 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) [hereinafter cited as Civil and Political].

only "to the extent strictly required by the exigencies of the situation."[21]

All states are bound to respect the sanctity of life, liberty, and religious freedom. States must afford judicial procedures adequate to ensure that these rights are not wrongfully abridged.[22] As the Compromis indicates, no individual was deprived of his life or post-war freedom without a fair hearing incorporating the procedural protections available at the time. No one was incarcerated or otherwise penalized for any offense without having been warned of its illegality. No one was deprived of any right because of his religion, race, or other classification impermissible during a state of national emergency.

The rights and freedoms offered to the Septentrionese detainees, which were the same as those offered to Meridionese detainees, reflected the current level of hostilities. As the conflict eased, civil liberties immediately increased. This is perhaps the clearest evidence of Meridion's good faith.

4. Even if the conventional standards are applicable to the Meridionese civil conflict, the conduct of the MLA was not contrary to those standards.

All international law which purports to control the conduct of war is based, ultimately, upon the desire to prevent "superfluous injury and unnecessary suffering."[23] "The jus in bello perennially has sought the point of equilibrium between the necessities of war and the observance of limits derived from fundamental normative principles and practical appeals to limit war."[24]

The modern law of war attempts to articulate the standards necessary to maintain this equilibrium. It is hoped that by joining the principles of

21. Civil and Political, supra note 20, art. 4, para. 1.

22. See, e.g., id. art. 4, para. 2; art. 6-8; 15-16; 18.

23. Protocol II, art. 35, para. 2, supra note 14. Accord J. Bond, The Rules of Riot 45 and passim (1974).

24. O'Brien, The Jus in Bello in Revolutionary War and Counterinsurgency, 18 Va. J. Int'l L. 193, 194 (1978).

military necessity (superior utility) and proportionality of means to ends, with the proscription of direct attacks on non-combatants, of perfidy, of torture, and of failure to give quarter, more humane warfare will result.[25/]

The individuals who are involved in combat must evaluate what is just, humane, and necessary. Decisions must be made, often on a moment's notice, generally under less than ideal conditions, and always with the knowledge that the world may second-guess the choice.

The most that may be expected under jus in bello is extension of the most humane treatment possible, in view of a good faith evaluation of the exigencies of the moment.

The formulators of traditional international law have developed rules and norms appropriate to the kinds of wars that predominated before the self-determination era. Meridion has recognized the validity and value of these norms in their natural application by becoming a party to several multilateral conventions relating to armed conflicts.[26/]

The terms used in multilateral agreements addressing the conduct of war have necessarily been broad. "[H]ere, as elsewhere in the law, 'the facts' are more important than the rule."[27/] Care must be exercised to apply these norms appropriately in the context of the less-developed and non-western nations. The access of liberation movements to funds, buildings and administrative personnel is close to non-existent. If they are to be allowed the fundamental right to fight for self-determination, the rules of war must respond to the realities they face.

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25. See generally O'Brien, supra note 24; G. Schwarzenberger, The Frontiers of International Law 256 ff. (1962).

26. See note 14, supra.

27. J. Bond, supra note 15, at 83.

Meridion observed its obligations under international law by extending the greatest protections possible under the circumstances. It could have done no more without jeopardizing its cause entirely.

C. Even if Meridion's actions during the conflict fell below the international legal standard, there should be no liability for these wrongs in the context of a self-determination struggle.

Self-determination is a right that all United Nations members are bound to respect and advance under the Charter.[28/] Political institutions such as the PDRM have a special responsibility, by virtue of the Charter, to strive for the achievement of self-determination in their own countries.[29/]

Self-determination is a fundamental and compelling norm of international law.[30/] Its achievement is indissolubly bound up with the furtherance of human rights.[31/] These basic norms of international law underlie the foundation of the United Nations organization. Meridion's civil disorders were part of a successful struggle for self-determination.

It would be entirely disingenuous to claim that there are not predictable costs of social disruption and turmoil to be incurred in the struggle for self-determination. Foreign domination, concessions and influence over underdeveloped nations were formerly established and lately maintained by force of arms.

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28. U.N. Charter art. 55, para. 1, and art. 56.

29. See Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR (Supp. 16) at 66, U.N. Doc. A/4684 (1960).

30. "The exceptional importance of the principle of self-determination in the modern world is such that today the principle has been held to constitute an example of jus cogens." Espiell, "Self-Determination and Jus Cogens," in UN Law/Fundamental Rights 167 (A. Cassese ed. 1979). See also Advisory Opinion on Western Sahara, 1975 I.C.J. 12, 31-33, 36.

31. Dinstein, "Self-Determination and the Middle East Conflict" in Self-Determination: National, Regional and Global Dimensions 243 (Y. Alexander and R. Friedlander eds. 1980). See also Chen, "Self-Determination as a Human Right," in Toward World Order and Human Dignity 230, 242 (M. Reisman & B. Weston eds. 1976).

Retributive acts that may be committed by those struggling for their country's liberation are quite predictable consequences of throwing off the repressive social structure imposed and maintained by the colonizers. Yet to charge the responsibility for these reasonably foreseeable costs only to the very nations that are carrying the burden of achieving self-determination would be manifestly unjust and at odds with the intention of the United Nations Charter. The costs of societal disruption in throwing off the colonial yoke should not be laid exclusively at the doorstep of responsible people's governments that succeed in establishing social order in their countries on the basis of self-determination and respect for fundamental human rights. Setting up a penalty for inevitable civil strife would coerce such governments to abandon the struggle for self-determination and permanently frustrate the achievement of full human rights. The undesirable effect of such a disincentive would be the same as that produced by foreign intervention in a domestic self-determination struggle.

It is the intention of the Charter that all nations, as well as international organizations, should participate in the process of achieving self-determination, so as to share the burden and permit the achievement of this aim in an orderly and peaceful fashion.[32/] When, due to political decisions quite beyond the control of the nation that is struggling for self-determination, this aid and participation is not forthcoming, it is unjust and contrary to the law of the Charter to assign the entire burden for any disruptions that may occur to the struggling new nation. Meridion found its way to self-determination without the helpful intervention of the United Nations or of any nation, and particularly without the cooperation of its former colonial master, Septentrion. Yet Septentrion has the temerity to claim in this Court that it may subvert, by its inaction, Meridion's progress towards self-determination, that the whole world may sit back and fail to smooth the path, and that even in this circumstance,

32. U.N. Charter art. 1.

the new popular government of Meridion should pay the entire price of disruptions that were really largely avoidable. A more complete perversion of the law of the Charter is hard to imagine.

Any remedy that would require the payment from an ex-colony to its former colonial suzerain for claims arising out of a struggle for self-determination is subversive both of the intentions of the Charter and of the firmly established international law norms of self-determination and fundamental human rights, and is highly inappropriate and offensive to any notion of justice. To make an ex-colony pay damages would be to make it pay twice, because it has already paid a heavy price of social and cultural repression during all the years of colonial and neo-colonial domination.

## IV. MERIDION'S ACTIONS WITH RESPECT TO THE MASS MIGRATION WERE IN FULL CONFORMITY WITH ITS INTERNATIONAL LEGAL OBLIGATIONS.

### A. There is no duty under international law not to cause a mass migration.

Mass migrations may be caused in a number of ways. A state's social policy, political philosophy or economic program may result in conditions which will cause a large number of people to leave. However, as long as a State pursues legitimate goals through legitimate means, it does not have a duty to refrain from such activities so as to avoid a mass migration. The mere creation of conditions that might cause a mass migration does not, without more, create a wrong remediable in international law.[33/]

### B. Meridion is not responsible for the emigrants' decision to flee.

An act of a state which is injurious to another state is an international delinquency only if it is committed willfully and maliciously, or with culpable

33. Johnson, Refugees, Departees, and Illegal Migrants, 9 Sydney L. Rev. 11, 20 (1980).

negligence.[34/] Thus, it may be unlawful for a State to intentionally flood another State with refugees.[35]

There is no evidence that those who left Meridion did so because of any willful or intentional policy on the part of the Meridionese government to cause a mass migration. In fact, according to the Compromis, only one group of emigrants had any direct contact with the government. These persons were asked to account for their actions during the hostilities. A government may take reasonable measures such as this to maintain national security. The government of Meridion is not liable under international law because these persons chose to flee instead of responding to a lawful order to testify. As to the remaining emigrants, there is no evidence of any willful action on the part of the Meridionese government to cause them to leave.

C. Meridion had an affirmative duty not to stop the migration.

Freedom of emigration from one's own nation is a fundamental human right,[36/] and a norm of customary international law.[37/] Furthermore, as a party to the Covenant on Civil and Political Rights, Meridion is bound to ensure the right to leave its territory.[38/] The right to depart and the duty to permit departure are not altered by the number of persons emigrating at one time. Even if the MLA or PDRM had been physically able to restrain the migration

34. IMCO Civil Liabilities Conventions (Oil Pollution): Hearings Before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works, 91st Cong., 2lst Sess. 92 (1970) (memorandum submitted by L. Goldie).

35. Jennings, Some International Law Aspects of the Refugee Question, 20 Brit. Y.B. Int'l L. 98, 111 (1939).

36. Universal Declaration of Human Rights, supra note 20, art. 13, para. 2.

37. Johnson, supra note 33, at 22.

38. Civil and Political, supra note 20, art. 12, para. 2.

(which they could not),[39] they were obliged by international law not to do so.

D. Whatever responsibility Meridion may have for causing the mass migration must be shared equally by Septentrion.

The emigration took place because of the disruption which occured in Meridion as a predictable consequence of a self-determination struggle. As the former colonial oppressor, Septentrion is directly responsible for the necessity for the self-determination movement. It shares responsibility for the consequences of that struggle.

Alternatively, any responsibility that Meridion alone may be deemed to bear should not result in a remedy in damages, as Meridion's actions were justified by the overriding importance of the struggle for self-determination.

## V. SEPTENTRION VIOLATED INTERNATIONAL LAW BY ITS ACTIONS TOWARD THOSE WHO FLED MERIDION.

A. Septentrion's treatment of Meridionese nationals in the "temporary resettlement camps" violates international law.

Article 55 of the United Nations Charter imposes a mandatory obligation to promote respect for, and observance of, human rights and fundamental freedoms. Moreover, Article 56 expresses the distinct legal duty that all members pledge themselves to act, jointly and severally, to achieve the purposes set forth in Article 55.[40] As a member of the United Nations, Septentrion is bound by the Charter to promote and actively protect human rights.

Septentrion is bound by the provisions of the Universal Declaration of Human Rights.[41] The Declaration has been invoked as an international obligation

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39. As the Compromis indicates, the individuals in question left from areas not yet under the control of the MLA and prior to the establishment of the People's Democratic Republic of Meridion.

40. H. Lauterpacht, International Law and Human Rights 148 (1950).

41. Universal Declaration of Human Rights, supra note 20.

numerous times at both the national and international level.[42] Declarations of the General Assembly, such as the Declaration on the Granting of Independence to Colonial Countries and Peoples, have explicitly provided that member States shall "faithfully and strictly" observe the provisions of the Human Rights Declaration.[43] Though it was not considered legally binding when first adopted, the Universal Declaration has achieved the force of customary law as the authoritative delineation of the human rights and fundamental freedoms protected by the Charter.[44]

When Septentrion admitted the Meridionese to its territory, it assumed certain obligations under international law, among which was the obligation to protect their human rights and fundamental freedoms. Whatever their status, be it that of emigrant, refugee, or illegal alien, these Meridionese are in the territory and under the jurisdiction of Septentrion. As human beings, they are entitled to the human rights guaranteed under the Charter as defined by the Declaration of Human Rights.

Septentrion's treatment of the Meridionese in the "temporary resettlement camps" fails to meet its international obligation. The Universal Declaration on Human Rights[45] provides that "everyone has the right to freedom of movement and residence within the borders of each State."[46] The restriction and conditions imposed on the Meridionese emigrants violate the terms and spirit of the law.

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42. van Boven, "United Nations and Human Rights: A Critical Appraisal," in UN Law/Fundmental Rights 121 (A. Cassese ed. 1979).

43. Declaration on the Granting of Independence to Colonial Countries and Peoples, supra note 29.

44. M. Ganji, International Protection of Human Rights 163 (1962).

45. Universal Declaration of Human Rights, supra note 20.

46. Id. art. 13, para. 1.

Article 16 of the Human Rights Declaration states that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the state."[47/] The separation of men and women in the "temporary resettlement camps" violates this principle.

The denial of access of legal counsel and the unavailability of administrative or judicial remedies violates Article 10 of the Human Rights Declaration.[48/]

It is not denied that Septentrion may have the right, under its municipal law, to temporarily detain aliens seeking admission. It is not denied that it may not be possible, in the case of a sudden influx of aliens, to immediately provide all the recognized human rights and freedoms. Temporary infringements, although undesirable, may be excusable. With the passage of time, however, what were once reasonable emergency measures inevitably become intolerable denials of fundamental rights.

The temporary resettlement camps have become permanent detention centers. Many Meridionese had been in the camps for more than two years at the time the Compromis was executed. Their treatment can no longer be explained as a temporary necessity. When Septentrion accepted these individuals, it accepted the obligation to respect their rights. The passage of time has made the treatment of the Meridionese increasingly inhumane. In failing to correct this situation, Septentrion has failed to uphold its international commitments.

Septentrion is using these captives as pawns to prolong the struggle between it and Meridion. Their detention is the latest phase of Septentrionese intervention in Meridion's domestic affairs. By refusing to respond to the urgent needs of these persons on any level but the political, Septentrion has made a travesty of the sanctity of individual human rights.

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47. Id. art. 16, para. 3.

48. Id. art. 10.

B. Septentrion violated international law by forcibly returning the emigrants to Meridion.

1. The interference by the Septentrionese Coastal Service with Meridionese vessels on the high seas violated the right to freedom of navigation.

Article 2(1) of the Convention on the High Seas[49] embodies the customary rule of international law of freedom of navigation on the high seas.[50]

On June 19, 1977, 5000 persons set sail from Meridion, bound for Septentrion. On June 30, these emigrants were intercepted on the high seas by vessels of the Septentrionese Coastal Service. Some of the Meridionese boats were deemed incapable of completing their voyage. The Coastal Service, in accordance with their obligation under international law, removed the people from these boats to the relative safety of the Coastal Service vessels. However, the remaining boats, which were declared seaworthy, should have been allowed to proceed on their way. But the Septentrionese Coastal Service, acting on the orders of their government, did not allow them to enjoy their right to travel freely on the high seas. The boats were forced to return to Meridion.

This action on the part of the Coastal Service was a direct violation of international law. While there are a number of reasons a vessel of another state may be approached on the high seas, none apply to the Meridionese boats. It is possible that Septentrion was concerned that these people did not have proper travel documents, and thus would violate Septentrionese immigration law should they try to enter Septentrion. However, international law does not acknowledge Septentrion's purported right to enforce its municipal laws on the high seas. While Septentrion has a right to enforce its immigration laws in

49. Convention on the High Seas of April 29, 1958, 450 U.N.T.S. 82, 13 U.S.T. 2312 (entered into force September 30, 1962).

50. Supra note 4, 588-94.

the territorial sea and the contiguous zone,[51] no state has the right to enforce its municipal laws upon a ship flying the flag of another state on the high seas.[52] Freedom of navigation on the high seas is one of the most firmly established rights in customary international law. No violation of that right is to be taken lightly.

2. Septentrion's actions violated the right of Meridionese nationals to leave their own country.

Article 13(2) of the Universal Declaration of Human Rights states that "(e)veryone has the right to leave any country, including his own, and to return to his country."[53] This fundamental freedom is further embodied in Article 12(2) of the International Covenant on Civil and Political Rights.[54] These provisions clearly indicate the customary nature of this inalienable human right.

The act of intercepting Meridionese vessels on the high seas and forcibly returning Meridionese citizens desiring to emigrate interfered with their exercise of the right to leave their country, and thus violated international law.

VI. IN ADJUDICATING THE CLAIMS OF STATE RESPONSIBILITY FOR INJURIES TO ALIENS, THE COURT SHOULD APPLY THE STANDARDS OF INTERNATIONAL LAW IN A FORM THAT SPEAKS TO TODAY'S WORLD.

The United Nations Charter, article 38, para. 1, mentions "principles of justice and international law" as the guidelines for the peaceful settlement of

51. Convention on the Territorial Sea and the Contiguous Zone of April 29, 1958 art. 24, para. 1(a), 516 U.N.T.S. 205, 15 U.S.T. 1606 (entered into force September 10, 1964).

52. Convention on the High Seas, supra note 49, art. 6, para. 1: "Ships shall sail under the flag of one State and, save in exceptional cases expressly provided for in international treaties or in their articles, shall be subject to its exclusive jurisdiction on the high seas" (emphasis added).

53. Universal Declaration of Human Rights, supra note 20, art. 13, para. 2.

54. Civil and Political, supra note 20, art. 12, para. 2.

disputes. Although the Statute of the ICJ empowers the Court to decide controversies only "in accordance with international law," the distinction should not suggest any dichotomy.55/

The responsibility of States for injuries to aliens cannot be decided in accordance with rules that were appropriate when the world was still dominated by colonialist powers. The rules of international law must be restated to reflect the changed character of international consensus. "The addition of . . . new states has . . . caused the 'increasing dilution of values and standards' that underpinned traditional international laws. . . . But international society is now truly a global society, and the law that attempts to order its dynamics can only do so if it reflects these new realities."56/

States that once bore the burden of colonial domination now stand on a par with the States among which international law attained its earlier stages of development. Such "newly independent states do not easily forget that the same body of international law that they are now asked to abide by, sanctioned their previous subjugation and exploitation and stood as a bar to their emancipation."57/

A large part of the newer nations' objection comes from their experience with the older international law as a series of barriers to self-determination, the achievement of the equality of nations, and the furtherance of human rights, which are the highest norms of current international law.

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55. Jessup, The Development of a United States Approach Toward the International Court of Justice, 5 Vand. J. Transnat'l L. 1 (1971).

56. Sumida, "The Right of Revolution: Implications for International Law and World Order," in Power and Law: American Dilemma in World Affairs 130, 159 (C. Barker ed. 1971).

57. Abi-Saab, The Newly Independent States and the Rules of International Law: An Outline, 8 Howard L.J. 95, 100 (1962). See also J. Syatauw, Some Newly Established Asian States and the Development of International Law, passim (1961).

> To the Koreans, the rule of law or law itself stood as a barrier to change . . .. [W]henever the Koreans attempted to change the status quo imposed on them by the colonialist, they usually ran into legal difficulties. Thus it becomes extremely relevant to raise the question, "In whose image is world peace through the world of law to be achieved?"
> . . . .
> [I]t is only natural for some of these states to demonstrate hostility toward such proposals as "world peace through the rule of law" if this means a new world order in the image of the colonialist-tailored legal norms of bygone days.58/

The affront to newer norms of international law is not the only reason not to apply the rules of State responsibility without significantly tailoring them. To achieve justice in a specific factual situation, especially one that pits an emerging State against a modern powerful one, the very subjectivity of the old norms must also be taken into account.

> It would be a great mistake to put all States historically on a par and not to take into consideration that some are living in a state of development not far remote from the Stone Age, while others still are where Western European States were around the time of Charlemagne. Neglecting this, one would too easily be inclined to frame rules from one's own standpoint only. One may wonder whether the Universal Declaration of Human Rights proclaimed in 1945, with due respect for its high idealism, does not suffer from a lack of historical intelligence. When, in addition to a backward lag, destiny joins in, it would be utterly unrealistic to expect States to abide with a law which, in their opinion, not only is ahead of their own development, but also would doom them to perdition. Pressing for their observance would then mean pressing for tragedy.
> . . . .
> In the last analysis, differences in historical development and in the influence law may have on a State's destiny account for differing normative concepts of law, and it is their clash which should be avoided in all circumstances where enforcement would lead to unmitigated tragedy.
> . . . .
> The mental flexibility thus required from the international lawyer well exceeds the modest measure of it necessary to accept the single co-existence of two normative concepts of law . . . one for national, and another for international law.59/

58. Chai, "Law as a Barrier to Change: A Korean Experience," in Power and Law, supra note 56, 111, 113.

59. Bos, Legal Archetypes and the Normative Concept of Law as Main Factors in the Defining and Development of International Law, 23 Netherlands Int'l L. Rev. 72, 86 (1976).

A number of eminent scholars have asserted that the responsibility of states for injuries to aliens in international law derives from a narrow European heritage of sources of law.60/

Today's norms of international conduct must not be formulated in a vacuum, without taking account of the relative positions of states that are called upon to abide by international law. International norms must not reflect only the international capacities, societal expectations and national aspirations of a small group of nations that once dominated the whole world. Rules of law must speak to the international actors as they are, and not only as abstract entities. "A general custom, I am persuaded, can no longer be received into international law without taking strict account of the opinion or attitudes of the States of the Third World."61/

The Court is called upon, in this case, to apply the law of state responsibility for injuries to aliens. In formulating its decision, the Court must consider the facts and circumstances of modern nations, the priorities of the international community, and the capacities and aspirations of its members.

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60. Guha Roy, Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal International Law?, 55 Am. J. Int'l L. 863 (1961); Abi-Saab, The Third World and the Future of the International Legal Order, 29 Revue Egyptienne de Droit International 27 (1973); Carlston, Universality of International Law Today: Challenge and Response, 8 Howard L. J. 79 (1962); Falk, Historical Tendencies, Modernizing and Revolutionary Nations, and the International Legal Order, 8 Howard L. J. 128 (1962); Pathak, The General Theory of the Sources of Contemporary International Law, 19 Indian J. Int'l L. 483 (1979); Ramcharan, Equity and Justice in International Law-Making, 15 Indian J. Int'l L. 47 (1975); Sinha, Some Reflections on the Impact of New Nations on International Law, 13 Howard L.J. 349 (1967). See also R. Anand, New States and International Law 39-43 (1972); Castañeda, The Underdeveloped Nations and the Development of International Law, 15 Int'l Org. 38, 39 (1961); F. Okoye, International Law and the New African States 178-84 (1972); J. Sinha, New Nations and the Law of Nations, ch. 6 (1967). But see Lillich, The Diplomatic Protection of Nationals Abroad: An Elementary Principle of International Law Under Attack, 69 Am. J. Int'l L. 359 (1975); Jessup, Non-Universal International Law, 12 Colum. J. Transnat'l L. 415 (1973).

61. Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain), 1970 I.C.J. 287, 330 (Separate Opinion of Judge Ammoun).

## CONCLUSION AND PRAYER FOR RELIEF

In light of the foregoing, Meridion respectfully prays that this Court:

DECLARE that Meridion's actions with respect to treatment of all BIS personnel were in conformity with its international legal obligations;

DECLARE that Meridion's actions in connection with the mass migration were appropriate under international law;

ADJUDGE that Septentrion violated international law by its actions with respect to the detention of Meridionese emigrants, by declining to resettle detainees into Septentrionese society, and by forcibly returning others to Meridion; and

DENY the relief requested by Septentrion.

Respectfully submitted,

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