

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

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REPUBLIC OF YOKUM,

Applicant

v.

CONFEDERATION OF SHANGRI,

Respondent

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February 1988

On Submission to the International Court of Justice

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**MEMORIAL FOR THE RESPONDENT**

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## JURISDICTION

The Governments of the Republic of Yokum and the Confederation of Shangri have submitted the following matter by special agreement to the International Court of Justice pursuant to paragraph 1 of Article 36 of the Statute of the International Court of Justice. Both states have accepted the jurisdiction of the Court without reservation.

## STATEMENT OF FACTS

The Peoples Armed Conflict Movement (PACM) is engaged in a struggle to secure self-determination in its homeland in the state of Midbari. [Problem at 1.] PACM has some international recognition as the government-in-exile of the state of Midbari [*Id.*], although neither Shangri nor Yokum recognises PACM [Regional Ruling.] Midbari's military strength compels PACM to conduct its operations from several neighbouring states. [Problem at *Id.*]

Shangri, a small developing state, is racked by violent and debilitating civil war. [*Id.* at 3.] Consequently, the government of Shangri is unable to exercise effective control over parts of its territory. [*Id.*] PACM exploits this situation by maintaining its headquarters in one such region of the city of Taluba - a development the government of Shangri is unable to counter. [*Id.*]

On 13 February 1987, the Beilan registered and crewed vessel, the *Hasdrubal*, set sail from Saq. [*Id.* at 1.] It carried passengers from eleven states. [*Id.*] Whilst in international waters, seven members of PACM, most of whom had boarded at Saq, took control of the ship. [*Id.*] One consequence of this action was the death of two crew members and one passenger. [*Id.*] PACM maintained its control of the ship for forty-eight hours. [*Id.* at 2.] During this time, the Movement carried out its aim of drawing world attention to its plight. [*Id.*] Indeed, the incident attracted substantial attention from the international media. [*Id.* at 4.] No further harm came to the passengers or crew.

Throughout their occupation of the ship, members of PACM were acting under orders of their superiors in Taluba. [*Id.* at 2-3.] PACM headquarters later acknowledged responsibility for the incident. [*Id.* at 2.] Yokum forces in the vicinity chose not to intercept the *Hasdrubal*. [*Id.*]

At 17:00 hours on 15 February, the captain of the *Hasdrubal* was instructed by members of PACM, who were in turn instructed by PACM headquarters, to set sail for Taluba. [*Id.* at 3.] The Taluba harbormaster, a Shangri official, refused the ship permission to dock, but was forced to co-operate in the light of threats to the

passengers' safety. [*Id.* at 3-4.] PACM members demanded and were promised asylum in return for the safe conduct of the passengers and crew. [*Id.* at 4.]

Yokum intelligence sources intercepted these communications. [*Id.*] Subsequently, the Yokum government demanded that Shangri arrest the members of PACM upon their arrival in Taluba. [*Id.*] Within hours of the *Hasdrubal* docking in Taluba, the PACM members were apprehended and imprisoned. [*Id.*] Two days later, on 18 February, a diplomatic note from the government of Yokum demanded the extradition of the members of PACM who had seized the *Hasdrubal*. [*Id.* at 4-5.] The state of Saq made a request in similar terms. [*Id.* at 5.]

On 1 March, in compliance with the request of the government of Saq, three members of PACM were despatched to Saq upon a Shangri aircraft. [*Id.*] Whilst in international airspace, the Shangri plane was intercepted by Yokum fighter aircraft and forcibly diverted to Beilan. [*Id.*] It is not known whether Beilan consented to this action. Crack Yokum troops stormed the plane at Beilan airport and abducted the PACM prisoners. [*Id.* at 5-6.] The prisoners were flown to Yokum under heavy guard. [*Id.* at 6.] Shangri demanded the return of the PACM members abducted by Yokum, and granted asylum to the four PACM members still in its custody. [*Id.*]

Shangri and Yokum are members of the United Nations and have consented to be bound by numerous treaties in their mutual interest. [*Id.*, Appendix.] Both states are signatories to the 1944 Chicago Convention on International Civil Aviation, the 1949 Red Cross Geneva Conventions, the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the 1982 Third United Nations Convention on the Law of the Sea, and the 1979 New York Convention Against the Taking of Hostages. [*Id.*]

The four 1949 Geneva Conventions have been ratified by Yokum, but it has not yet enacted their provisions in municipal law. [*Id.* at 6.] Both Shangri and Yokum have enacted into municipal law legislation giving effect to the Hostages Convention. [*Id.*]

The parties have agreed to submit this dispute by special agreement to the International Court of Justice.

## QUESTIONS PRESENTED

1. Is Shangri obligated at international law to try or extradite the PACM members in its territory, notwithstanding that PACM is engaged in a struggle for self-determination?

2. Is Shangri responsible at international law for the activities of PACM originating on parts of Shangri's territory over which the Shangri government lacked effective control?

3. Was Yokum's forcible diversion of the Shangri aircraft carrying three PACM members to Saq a violation of international law?

## SUMMARY OF ARGUMENT

PACM is an organization fighting for the liberation of its homeland, Midbari, from alien occupation. PACM is entitled to use force in pursuit of this objective and is engaged in international armed conflict. Self-determination has recently emerged as a norm of *jus cogens* from which no derogation is permitted. PACM is not guilty of any international crimes and cannot, therefore, be subject to criminal sanctions. PACM's actions do not amount to piracy, hostage taking or wilful killing, as their actions do not fall within the definitions for these crimes under treaties or custom. Shangri is therefore not obligated to try or extradite them, indeed is exhorted at international law to support them in their struggle for self-determination.

Even if the court characterizes PACM's actions as international crimes, Shangri is still under no obligation to try or extradite those members accused of hijacking. The relevant treaties make trial or extradition optional and no such obligation exists at customary international law. Furthermore, Shangri has the right to grant asylum or refuge to PACM members as an exercise of its own state sovereignty, because of the political nature and motivation of PACM's actions and on the basis of humanitarian considerations. This right is not abrogated by treaties to which Shangri is a party.

Regardless of the status of PACM's actions, Shangri is not implicated in them and is not responsible for them at international law. Shangri has in no way assisted or condoned PACM's activities. Principles of state responsibility demand more than mere toleration of a rebel group's activities to shift the burden of responsibility to the tolerating state. Given the state of civil war in Shangri and its scarcity of economic resources, Shangri's inability to exercise control over the actions of PACM members within its territory was not illegal. Furthermore, Shangri's alleged failure to prosecute the PACM members responsible for the sequestration of the Hasdrubal is not tantamount to complicity in the act.

International decisions hold that non-punishment or even approval of a crime is not identical with being an accomplice to it. Shangri is thus absolved from any violation of minimum standards of state responsibility.

Yokum's interception of the Shangri aircraft and abduction of the PACM members on board constituted acts of piracy and kidnapping and violated the cardinal principle of international law prohibiting the use of force. This principle has reached the status of *jus cogens* and no derogation from it is permitted. One legitimate exception to the prohibition is the use of force in self-defence. At international law, the right of self-defence must be triggered by an armed attack. It must be in response to immediate necessity and the defensive action must be proportionate to the initial wrong. Shangri's toleration or even tacit support of PACM is not included in the concept of armed attack as defined by international tribunals. Actions of guerillas in the course of their struggles for liberation have rarely been characterized as armed attacks by the Security Council of the United Nations. Hence, no action of Shangri or PACM justifies Yokum's unilateral resort to force.

Not only did Yokum's action violate the use of force prohibition, it also amounted to a serious violation of Shangri's territorial sovereignty. This breached the peremptory norm of non-intervention, acknowledged recently by the International Court of Justice. Furthermore, Yokum's intervention was an act of aggression and aerial piracy or hijacking as defined and proscribed by the relevant conventions. The illegal abduction of the PACM members aboard the Shangri jet constituted international kidnapping, condemned at international law as a violation of sovereignty and human rights.

Return of those illegally and forcibly abducted from the Shangri jet is the appropriate reparation.

I. THE CONFEDERATION OF SHANGRI (SHANGRI) IS NOT BOUND TO TRY OR EXTRADITE THE MEMBERS OF THE PEOPLES ARMED CONFLICT MOVEMENT (PACM) INVOLVED IN THE SEIZURE OF THE HASDRUBAL AND IS JUSTIFIED IN RELEASING THEM.

Members of PACM have committed no international crimes for which they can be tried or extradited. PACM is engaged in a legitimate struggle for self-determination which entitles it to use force in the pursuit of this objective. It is thus engaged in international armed conflict and is guilty of no crime as it has not breached the laws of war. Even if the laws of peace were held to apply to PACM's activities, the seizure of the *Hasdrubal* is not an international crime as it does not constitute hostage-taking or piracy.

A. Members of PACM have Committed No International Crimes for which They can be Tried or Extradited.

1. PACM's pursuit of self-determination entitles it to use force.

The right of self-determination is a fundamental norm of customary international law. The importance of this rule is emphasised in many treaties,<sup>1</sup> General Assembly Resolutions,<sup>2</sup> decisions of the International Court of Justice<sup>3</sup> and the writings of publicists.<sup>4</sup> PACM is entitled to use force to achieve this goal, an exception to the

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<sup>1</sup> International Covenant on Civil and Political Rights, 16 Dec. 1966, Annex to G.A. Res. 2200 (XXI) 21 U.N. GAOR, Supp. (No. 16) at 49; 1977 U.K.T.S. 6 (Cmd. 6702); International Covenant on Economic, Social and Cultural Rights, 16 Dec. 1966, Annex to G.A. Res. 2200 (XXI) 21 U.N. GAOR, Supp. (No. 16) at 49; 1977 U.K.T.S. 6 (Cmd. 6702); U.N. Charter arts 1, 55, 56 and 73.

<sup>2</sup> Declaration on the Granting of Independence to Colonial Territories and Peoples, G.A. Res. 1514 (XV), 15 U.N. GAOR, Supp. (No. 16) at 66, U.N. Doc. A/4686 (1960); Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), 25 U.N. GAOR, Supp. (No. 28) at 121, U.N. Doc. A/8028 (1971).

<sup>3</sup> *South West Africa Cases* (Eth. v. S.A. ; Lib. v. S.A.), 1966 I.C.J. 6 (Second Phase); *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* (1970). 1971 IC.J. 16 (Advisory Opinion); *Western Sahara Case*, 1975 I.C.J. 12 (Advisory Opinion )

<sup>4</sup> See I. Brownlie, *Principles of Public International Law*, 513, 515 (3d ed. 1979); R. Higgins, *The Development of International Law through the Political Organs of the United Nations*, 90-106 (1963).

general prohibition on the use of force in article 2(4) of the United Nations Charter. This right is enunciated in General Assembly Resolution 2621<sup>5</sup> and in General Assembly Resolution 3314,<sup>6</sup> which excludes the activities of movements seeking self-determination from the 'Definition of Aggression.' The right was also recognised recently by an overwhelming majority of states in the Draft Resolution on Measures to Prevent International Terrorism adopted by the Sixth Committee (Legal) of the United Nations General Assembly on 1st December, 1987.<sup>7</sup> Paragraph 14 of the Draft Resolution reads as follows: "[N]othing in the present resolution should in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter of the United Nations ..."<sup>8</sup> The right of such peoples to use force is an essential element of minimum world public order.<sup>9</sup>

2. PACM is engaged in international armed conflict and has not breached the applicable laws of war.

Article 1(4) of Protocol I to the 1949 Geneva Convention states that international armed conflicts include those "armed conflicts in which peoples are fighting against colonial domination, *alien occupation* and against racist regimes *in the exercise of their right of self-determination*, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the

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<sup>5</sup> Programme of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Territories and Peoples, G.A. Res. 2621 (XXV), 25 U.N. GAOR, Supp. (No. 28) at 1, U.N. Doc A/8028.

<sup>6</sup> Resolution on the Definition of Aggression, G.A. Res. 3314, (XXIX) 29 U.N. GAOR, Supp. (No. 31) at 142, U.N. Doc. A/9631 (1975).

<sup>7</sup> Sixth Comm. (Legal) (42nd Session Agenda Item 126), U.N. Doc. A/C.6/42/L.24 (1987).

<sup>8</sup> *Id.* at 6.

<sup>9</sup> Reisman, *Coercion and Self-determination: Construing Charter Article 2(4)*, 78 Am. J. Int'l L. 642 (1984).

United Nations.<sup>10</sup> General Assembly Resolution 3013 is couched in identical terms.<sup>11</sup>

Both of these statements are declaratory of the new position at customary international law. General Assembly resolutions provide the strongest possible evidence of custom in this matter.<sup>12</sup> Although most western states voted against General Assembly Resolution 3103, many have since ratified the 1977 Protocols to the Geneva Conventions<sup>13</sup> thereby demonstrating substantial consensus in the international community on this issue. Resolutions of the General Assembly have been acknowledged as "the principal device for normative elaboration with regard to new areas of international law."<sup>14</sup> As the members of PACM are engaged in a struggle to secure self-determination in their homeland in the state of Midbari, which is under alien occupation,<sup>15</sup> they are clearly engaged in international armed conflict.

PACM has not breached the laws of war whilst engaging in international armed conflict. The only possible offences of which PACM could stand accused are those of hostage-taking or wilful killing.

PACM has not committed an act of hostage-taking as proscribed by article 147 of Geneva Convention IV. Hostage-taking occurs when there is an unlawful detention for the purposes of extracting a ransom or concession.<sup>16</sup> It does not matter

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<sup>10</sup> Protocol I Additional to the 1949 Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts, *opened for signature* at Geneva, 8 June 1977, 16 I.L.M. 1391 (1977) (emphasis ours).

<sup>11</sup> Basic Principles of the Legal Status of the Combatants Struggling Against Colonial and Alien Domination and Racist Régimes, G.A. Res. 3103 (XXVIII), 28 GAOR, Supp. (No. 30A), U.N. Doc. A/9030 (1974).

<sup>12</sup> *Military and Paramilitary Activities in and against Nicaragua* (Nicar. v. U.S.), 1986 I.C.J. 14 [hereinafter referred to as *Nicaragua*].

<sup>13</sup> 73 states have ratified the protocol as of 1 March 1988 including 8 Western States; see also Murray, *The 1977 Geneva Protocols and Conflict in Southern Africa*, 33 Int'l & Comp. L. Q. 463, 465 (1984).

<sup>14</sup> Stein, *The Approach of the Different Drummer: The Principle of the Persistent Objector in International Law*, 26 Harv. Int'l L. J. 457, 464 (1985).

<sup>15</sup> Problem at 1-2.

<sup>16</sup> 1 M. Bassiouni, *International Criminal Law* 475 (1986).

whether the concession sought is political or financial in nature.<sup>17</sup> As PACM has sought no concessions, it has not breached article 147.

PACM members have not committed the crime of wilful killing, which is also proscribed by article 147 of Geneva Convention IV. The killing of two crew members and one passenger was an unintended consequence of the seizure of the *Hasdrubal*.<sup>18</sup> The mental element of wilfulness, stipulated in the offence itself, is clearly absent.

### 3. PACM's actions do not amount to hostage-taking.

The sequestration of the *Hasdrubal* does not amount to an act of hostage-taking within the meaning of article 1 of the 1979 New York Convention Against the Taking of Hostages (hereinafter referred as the Hostages Convention).<sup>19</sup>

There are three elements which must be fulfilled before the offence of hostage-taking can be made out. First, there must be a seizure or detention of persons. Second, there must be a threat to kill or injure or a continued detention of such persons. Third, the above two acts must be committed in order to compel third parties to abstain from doing any act or thing as a condition for the release of the hostages. Thus, third party compulsion must be the motive for *both* the seizure itself *and* the continued detention. In the instant case any possible third party compulsion coincides only with the second physical element of the offence, that is, continued seizure. It could not be said that PACM seized the ship in order to compel non-intervention by third parties<sup>20</sup> or to force a grant of asylum.<sup>21</sup> Their true motive in seizing the ship was to alert the international community to their cause and this cannot amount to third party compulsion.<sup>22</sup>

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<sup>17</sup> *Id.* at 477.

<sup>18</sup> Problem at 1.

<sup>19</sup> Convention Against the Taking of Hostages *opened for signature* at New York, 17 Dec. 1979, U.N. Doc. A/Res. 34/146 (1979), 28 I.L.M. 1457 (1979).

<sup>20</sup> Problem at 2.

<sup>21</sup> *Id.* at 3-4.

<sup>22</sup> *Cf. Achille Lauro* incident, where substantive demands were made.

#### 4. PACM's actions do not amount to piracy.

Piracy is defined in article 101 of the Convention on the Law of the Sea (hereinafter referred to as Montego Bay Convention) as "any *illegal acts* of violence or deportation committed *for private ends* by the crew or passengers of a private ship, and directed on the high seas *against another ship*."<sup>23</sup> This definition is a restatement of the analogous provision in the 1958 Geneva Convention on the High Seas,<sup>24</sup> which represents the contemporary position at customary international law.<sup>25</sup>

The sequestration of the *Hasdrubal* does not fulfil the three requisite elements within the definition of piracy under article 101 of Montego Bay Convention and therefore does not amount to piracy either under the treaty or customary international law:

- (a) It was not an illegal act of detention being a legitimate act of belligerency;
- (b) It was not an act committed for private ends, being an act of a political nature in furtherance of PACM's exercise of their legitimate right of self-determination;

(c) The fact that the *Hasdrubal* was seized from within by some of its own passengers<sup>26</sup> (internal seizure) means that the acts were not directed "against another ship". The importance of this requirement was vigorously stressed by the International Law Commissioners,<sup>27</sup> who drafted the provisions of 1958 Geneva Convention on the High Seas. The primary aim of the Convention was to provide a basis of universal jurisdiction to piratical acts, in order to effectuate the suppression of piratical acts.<sup>28</sup> As the flag state has jurisdiction in instances of internal seizure,

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<sup>23</sup> Convention on the Law of the Sea, *opened for signature* at Montego Bay, 10 Dec. 1982, U.N. Doc. A/Conf. 63/122 and Corr. 1 to 11, 21 I.L.M. 1261 (1982) (emphasis ours).

<sup>24</sup> Convention on the High Sea, *opened for signature* at Geneva, 19 Apr., 1958, 450 U.N.T.S. 82, 1963 U.K.T.S. 5 (Cmd. 1929).

<sup>25</sup> D. Dubner, *The Law of International Sea Piracy* 6-7 (1980).

<sup>26</sup> Problem at 1.

<sup>27</sup> 2 D. O'Connell, *Law of the Sea* 970-73 (1970).

<sup>28</sup> D. Dubner, *supra* note 25.

there was clearly no need to include such acts (traditionally classed as mutinous and outside the scope of piracy at international law) within the definition of piracy.<sup>29</sup>

B. Even if the Court finds that PACM Members Have Committed International Crimes as Alleged, Shangri is not under an Obligation to Try or Extradite the PACM Hijackers Remaining in its Territory.

1. There is no obligation for Shangri to try or extradite the members of PACM at customary international law.

At customary international law there is no obligation to try or extradite an alleged offender.<sup>30</sup> In the absence of an obligation arising from a treaty to which the requesting and requested states are both parties, surrender of the alleged offender cannot be demanded as right.<sup>31</sup>

The requirements for a principle to be accepted as customary international law are the material element of state practice and the psychological element of *opinio juris*.<sup>32</sup> With respect to state practice, whilst the requirement to try or extradite has been included in multilateral and bilateral treaties, many conventions have not been ratified by all signatories, and the requirement is often couched in permissive rather than obligatory language.<sup>33</sup> Further, many states follow the practice of not prosecuting offenders or of convicting and then pardoning them or commuting their sentence significantly.<sup>34</sup> States perceive the taking of such action to be in their best interests. The state practice requirement of an obligation to try or extradite is therefore absent.

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<sup>29</sup> D. Greig, *International Law* 331-32 (2d ed. 1976).

<sup>30</sup> I. Shearer, *Extradition in International Law* ch.1 (1971).

<sup>31</sup> M. Bassiouni, *International Extradition and World Public Order* 6-8 (1974).

<sup>32</sup> *North Sea Continental Shelf Case* (Den. v. W. Ger.; Neth. v. W. Ger.), 1969 I.C.J. 3.

<sup>33</sup> Shacher-Landau, *Extraterritorial Penal Jurisdiction and Extradition*, 29 *Int'l & Comp. L. Q.* 274 (1980).

<sup>34</sup> *Id.*

2. Shangri is not obligated by any treaty to try or extradite the four members of PACM still within its territory.

The obligation under article 101 of the Montego Bay Convention to co-operate to the fullest possible extent in the suppression of piracy does not require a state party to try or extradite those guilty of piratical acts. As has been noted in relation to other Conventions<sup>35</sup> an inference that the parties have undertaken an obligation as onerous as the one to try or extradite, cannot be drawn from such general provisions as these. This is supported by the express inclusion of an obligation to try or extradite in a variety of Conventions which preceded Montego Bay Convention.<sup>36</sup>

There is also no obligation to try or extradite hijackers to whom a promise of asylum has been made in order to ensure the safe release of hostages. The making of such promises is a common state practice. Any obligation which required a state to break such a promise would render such methods of safely freeing hostages futile in the future. Shangri was obligated to make such a promise by article 3(1) of the Hostages Convention<sup>37</sup> which takes precedence over article 8 in these circumstances.<sup>38</sup> Assuming that Shangri makes extradition conditional upon the existence of a bilateral treaty, article 10(2) of the Hostages Convention makes the application of the Convention optional, and thus there is no obligation to try or extradite.

Furthermore, Shangri is not obligated to comply with the extradition request from the government of Yokum, as various procedural requirements have not been met. There is no evidence that the request for extradition was accompanied by a warrant for arrest which identified the alleged offenders and made out a case against

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<sup>35</sup> Verwey, *The International Hostages Convention and National Liberation Movements*, 75 Am. J. Int'l L. 69, 83-84 (1981).

<sup>36</sup> *Id.*

<sup>37</sup> Article 3(1) obliges states to take all measures to facilitate the release of hostages.

<sup>38</sup> See the Report of the Ad Hoc Committee for the Drafting of an International Convention Against the Taking of Hostages, 33 U.N. GAOR, Supp. (No. 39), U.N.Doc. A/33/39 (1979).

them.<sup>39</sup> In addition, although the request for extradition is based in part upon breaches of the Geneva Conventions, Yokum has not enacted these treaties into its municipal law.<sup>40</sup> Grave breaches of the treaties, therefore, cannot be prosecuted in Yokum. This is a further ground for a refusal to extradite.

C. Under the Principle of State Sovereignty Shangri is Entitled to Grant Asylum to Those Members of PACM who Seek Refuge within its Territory.

1. Shangri's action in releasing PACM members is a legitimate exercise of state sovereignty.

Independence of states within the international community is paramount, and restrictions upon their independence cannot be presumed.<sup>41</sup> The right of a state to grant asylum is an expression of its exercise and enjoyment of state sovereignty<sup>42</sup> and is qualified only by treaty obligations.<sup>43</sup> The right to grant asylum has been recognised in treaties, declarations and has been practised by the community of nations over many centuries.<sup>44</sup> Such evident recognition is sufficient to qualify the practice of granting asylum as a general principle of international law as defined in article 38(1) of the Statute of the International Court of Justice.

Shangri's release of the members of PACM is an expression of sovereignty which is within the reserved domain of domestic jurisdiction, an act of sovereignty which the international legal order must respect and cannot declare invalid.<sup>45</sup>

2. Shangri's right to grant asylum is not abrogated by the provisions of any treaty to which Shangri is a party.

Neither the right to grant asylum nor the political offence exception is expressly excluded by the Geneva Conventions, Montego Bay Convention or the Hostages

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<sup>39</sup> *Supra* note 30 (for a complete exposition on the technical requirements of extradition).

<sup>40</sup> Problem at 6.

<sup>41</sup> *Lotus Case* (Fr. v. Turk.), 1927 P.C.I.J. series A, 10.

<sup>42</sup> (Colom. v. Peru), 1950 I.C.J. 266.

<sup>43</sup> A. Grahl-Madsen, *Territorial Asylum* 2 (1980).

<sup>44</sup> *Id.* at 3-5

<sup>45</sup> *Interpretation of the Statute of the Memel Territories* (Gr. Brit., Fr., It., Jap. v. Lith.), 1932 P.C.I.J 4 series A/B No. 9.

Convention. Applying the maxim *expressio unius est exclusio alterius*,<sup>46</sup> it can be inferred that Shangri is acting in consonance with its international obligations in deciding to release members of PACM within Shangri's territory.

3. Shangri is entitled to grant the PACM members asylum under the political offence exception to trial or extradition.

The doctrine of the political offence exception allows for the exclusion of political offences from extraditable offences contained in treaties.<sup>47</sup> The task of defining a "political offence" falls to the state of whom extradition is requested.<sup>48</sup> Shangri is entitled to use its own criteria in deciding whether or not PACM's actions amount to a political offence.

As PACM's acts were carried out in furtherance of their right of self-determination,<sup>49</sup> which is a political act, any obligation which may exist to try or extradite the members of PACM is overridden by the operation of the political offence exception.<sup>50</sup>

The classic statement of a political offence requires that the offence must be incidental to and form part of a political uprising.<sup>51</sup> A gloss has been added to this formulation, requiring that in order for there to be a political offence "there must be two or more parties in the state, each seeking to impose the government of their own choice on the other", and the offence must be committed in furtherance of that end.<sup>52</sup>

PACM's acts fulfil this test, as they are incidental to their on-going struggle against Midbari which has been in progress over a period of time.<sup>53</sup> Their actions in

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<sup>46</sup> The maxim is a permissible aid to treaty interpretation: see *Life Insurances Claim* (U.S. v. Ger.), 7 R. Int'l Arb. Awards 91, 111 (1924).

<sup>47</sup> M. Bassiouni, *supra* note 31, at 93.

<sup>48</sup> C. Van den Wijngaert, *The Political Offence Exception to Extradition* 1-2 (1980).

<sup>49</sup> Problem at 1.

<sup>50</sup> M. Farrell, ch 1. (1985).

<sup>51</sup> *In Re Castioni*, [1891] 1 Q.B. 149.

<sup>52</sup> *In* [1894] 2 Q.B. 415.

<sup>53</sup> Problem at 3.

taking control of the *Hasdrubal* were directed towards revealing their "determination and ability to liberate their homeland".<sup>54</sup> As a result of their overt display PACM can expect greater global assistance in their efforts to effect political change. Shangri is thus justified in applying the political offence exception to those members of PACM within its custody.

4. Shangri has invoked both the principle of *non-refoulement* and humanitarian considerations in its decision not to extradite the members of PACM.

Even if the members of PACM cannot claim a personal right to asylum, the principle of *non-refoulement* - the prohibition of the forcible return of a refugee to a country of persecution - is well established in international law.<sup>55</sup> The principle is based upon the premise that a refugee should be able to find a haven where s/he is safe from persecution even if the refugee cannot choose a particular state in which to seek refuge.<sup>56</sup>

Similarly, one justification for allowing the operation of the political offence exception is that it allows protection against an unfair and retaliatory trial in the requesting state, on the basis of the extraditee's race, religion, or *political beliefs*.<sup>57</sup> Following Yokum's flagrant breach of international law in engaging in aerial piracy,<sup>58</sup> thereby violating Shangri's sovereignty, there is every reason to fear that Yokum would not be impartial in its handling of the members of PACM. If, as it is submitted, extradition is sought for a political purpose, requested states are within their rights to refuse to allow extradition. Shangri avows itself of that right.

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<sup>54</sup> Problem at 2.

<sup>55</sup> A. Grahl-Madsen, note 43, at 40-42.

<sup>56</sup> *Id.*

<sup>57</sup> C. Van den Wijngaert, note 48 at 3.

<sup>58</sup> Problem at 5.

5. Shangri is entitled to free the four members of PACM still in its territory as an act of legitimate reprisal.

A state is entitled to use non-forcible reprisals in certain circumstances. The validity of this right has been recognised by the International Law Commission,<sup>59</sup> International Arbitral Tribunals,<sup>60</sup> state practice<sup>61</sup> and eminent publicists.<sup>62</sup> Three factors are required for a reprisal to be legitimate: (1) the reprisal must not involve a use of force;<sup>63</sup> (2) a reprisal must be by the victim state,<sup>64</sup> and (3) the reprisal must not be disproportionate.<sup>65</sup> All of these requirements are met in the instant case because: (1) Shangri's grant of asylum did not involve a use of force; (2) Shangri was the victim state as the reprisal was occasioned by Yokum's forcible diversion of a Shangri plane;<sup>66</sup> and (3) the granting of asylum was clearly proportionate to the forcible abduction of the members of PACM aboard the Shangri aircraft.

## II. SHANGRI IS NOT RESPONSIBLE AT INTERNATIONAL LAW FOR THE ACTIONS OF PACM.

### A. Shangri is not Responsible at International Law for the Activities of PACM in its Struggle for the Liberation of Midbari.

1. Shangri is not responsible for PACM's activities due to its lack of complicity in them.

The mere fact that PACM raids have been launched from Shangri is not sufficient to make Shangri responsible for any such raids. The United Nations Security Council

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<sup>59</sup> Note, *Counter-Measures in Respect of an Internationally Wrongful Act*, Y.B. Int'l L. Comm'n 155 (1984).

<sup>60</sup> *Naulilaa Case* (Port. v. Ger.), 2 R. Int'l Arb. Awards 1012 (1928).

<sup>61</sup> An Austrian Statute allows for reprisals after certain breaches of international law: Fed. Statute BGBl. No. 151/1964; *Confiscation of Property of Sudeten German Case*, 15 I.L.R. 24-27 (Amtsgericht of Dingolfing).

<sup>62</sup> F. Kalshoven, *Belligerent Reprisals* (1977); E. Zoeller, *Peacetime Unilateral Remedies: An Analysis of Counter-Measures* (1984); H. Kelsen, *Principles of International Law* (1980).

<sup>63</sup> *Nicaragua*, *supra* note 12, at 102.

<sup>64</sup> Malanczuk, *Countermeasures and Self-defence as Circumstances Precluding Wrongfulness in the I.L.C.'s Draft Articles on Responsibility*, 43 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 705, 765 (1983).

<sup>65</sup> *Naulilaa Case*, *supra* note 60.

<sup>66</sup> Problem at 6.

made it clear in relation to Israel's raid on Beirut that there must be a proven link, going beyond mere use of territory between the host state and the perpetrators of any violence, before the state would be accorded responsibility for the relevant acts.<sup>67</sup>

The same requirement was emphasised by the International Court of Justice in the *Iranian Hostages Case*.<sup>68</sup>

The court went further in *Nicaragua v United States*, holding that even the provision of arms and logistic support to a rebel group falling short of actual operational control of the group, was not sufficient to vest responsibility for the rebels' actions in the state assisting the rebels.<sup>69</sup> In fact, Shangri has done none of these things. It has provided no assistance to PACM, nor has there been any involvement of Shangri officials in PACM's activities. There is therefore no basis for imputing responsibility to Shangri for the activities of PACM.

2. Shangri is not responsible because PACM's activities were beyond its effective control.

Civil strife in Shangri left the government without effective control of that portion of its territory occupied by PACM.<sup>70</sup> It would "be an unjust expectation and contrary to principles of international law to hold the government responsible."<sup>71</sup> Shangri's actions must therefore be considered in light of this lack of governmental capacity, as recognised in the *Iranian Hostages Case*.<sup>72</sup> Shangri's lack of control is analogous to cases where states' failure to apprehend criminals have been excused because the crimes occurred in inaccessible or sparsely populated areas.<sup>73</sup> Attempts by the United

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<sup>67</sup> Security Council Resolution 262, U.N. Doc. S/Inf/23/Ref. 1 (1968).

<sup>68</sup> *United States Diplomatic and Consular Staff in Teheran* (U. S. v. Iran), 1980 I.C.J. Rep. 3, at 30.

<sup>69</sup> *Nicaragua*, *supra* note 12, at 65.

<sup>70</sup> Problem at 3.

<sup>71</sup> *Otto Kummerow Case* (Ger. v. Venez.), J. Ralston, *Venezuelan Arbitrations of 1903*, 526, 559 (1904).

<sup>72</sup> *Supra*, note 68, at 32, 34.

<sup>73</sup> *Boyd Case*, 4 R. Int'l Arb. Awards 380 (1929); *Almaguer Case*, 4 R. Int'l Arb. Awards 523 (1929); *Mead Case*, 4 R. Int'l Arb. Awards 653 (1931).

Nations to codify the principles in this area<sup>74</sup> have also recognised that the extent of a state's responsibility for injuries to aliens must reflect the capacity of the state to prevent such injuries.<sup>75</sup>

The International Court of Justice has recently given expression to this principle of international law by its finding that the chaos in a developing nation resulting from civil warfare absolved it from responsibility for illegal activity across its borders.<sup>76</sup> Faced with the exigencies of scarcity of economic resources, ongoing civil war and lack of effective control of the relevant portions of its territory, Shangri should similarly be absolved from responsibility for the activities of PACM, a rebel group operating on its territory.

The basis of imputing responsibility to a state is a failure on the part of the state to take "all reasonable measures."<sup>77</sup> A measure with no chance of success cannot be regarded as reasonable - indeed it would be most unreasonable to hold the Shangri government, fighting to maintain control over its territory, responsible for failing to send officials on a futile mission into territory it does not control.

3. Shangri's failure to apprehend the members of PACM does not give rise to state responsibility for their actions.

Even if Shangri had been guilty of a denial of justice in relation to the failure to apprehend and punish PACM members after the raids, this does not make it responsible for their actions. The *Janes Case* clearly distinguished between responsibility for failing to prosecute and punish diligently a murderer and complicity in the murder itself: "Even if the non-punishment were conceived in

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<sup>74</sup> Garcia-Amador, *The Responsibility of States for Damage Caused to the Person or Property of Aliens*, [1961] 2 Y.B. Int'l L. Comm'n 1, U.N. Doc. A/CN.4/134 and Add.1; L. Sohn and R. Baxter, *Convention on the International Responsibility of States for Injuries to Aliens*, (1961); Ago (Fourth) Report on State Responsibility, [1972] 2 Y.B. Int'l L. Comm'n 126; U.N. Doc. A/CN.4/264 and Add.1. (1972).

<sup>75</sup> "[C]ircumstances [to be taken into account] ... include ... the physical possibility of preventing [the injury] with the resources available for the state", Garcia-Amador, *supra* note 74, art 7(2); "The means the State has available to protect an alien must be taken into account", L. Sohn & R. Baxter, *supra* note 74, at 137.

<sup>76</sup> *Nicaragua*, *supra* note 12, at 65.

<sup>77</sup> *Janes Case*, 4 R. Int'l Arb. Awards 82 (1927).

some kind of approval - which in the Commission's view is doubtful - still approving of a crime has never been deemed identical with being an accomplice to that crime."<sup>78</sup> The International Court of Justice drew the same distinction in the *Iranian Hostages Case*.<sup>79</sup>

Accordingly, even if Shangri had failed to meet the required standard of diligence in apprehending and prosecuting PACM members, it would be responsible only on the basis of a denial of justice, and not responsible directly for the acts of the individuals involved.<sup>80</sup> The declaration sought by Yokum is therefore inappropriate.

4. PACM's activities are a legitimate part of its struggle to end the alien occupation of Midbari.

PACM's actions are a legitimate expression of its right to struggle for self-determination.<sup>81</sup> Its objectives of bringing pressure to bear on the *de facto* government of Midbari, and of attracting world attention and support for the plight of its people, are clearly directed to that end.<sup>82</sup> Accordingly, Shangri is not obligated at international law to suppress PACM's struggle.

B. Shangri is not Responsible for the Sequestration of the *Hasdrubal* by Members of PACM.

Shangri displayed diligence and good faith throughout this incident. The Taluba Harbourmaster, a Shangri governmental official, initially refused permission for the *Hasdrubal* to dock at Taluba, thus preventing the PACM members from returning to their base in Shangri. Only in response to threatened violence did the Shangri government back down and allow permission to dock.<sup>83</sup>

Shangri officials apprehended the PACM members responsible for the sequestration of the *Hasdrubal* at the earliest possible opportunity. Arrest at the

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<sup>78</sup> *Id.* at 87.

<sup>79</sup> *Supra*, note 68, at 31.

<sup>80</sup> *Id.* at 30.

<sup>81</sup> *Supra*, notes 1-9 and accompanying text.

<sup>82</sup> *Id.*

<sup>83</sup> Problem at 5.

dockside, which was lined with PACM members and supporters,<sup>84</sup> was a difficult, if not impossible, exercise. Nonetheless, within hours of their return to Shangri territory the members of PACM involved in the sequestration of the *Hasdrubal* were taken into Shangri custody and imprisoned.<sup>85</sup>

Shangri's subsequent extradition to Saq of three of the hijackers, and its grant of asylum to the remaining four, were legitimate exercises of its sovereignty.<sup>86</sup>

There is thus no international wrong for which it can be held responsible.

### III. THE REPUBLIC OF YOKUM VIOLATED INTERNATIONAL LAW BY FORCIBLY DIVERTING A SHANGRI AIRCRAFT AND ABDUCTING PERSONS ON BOARD.

#### A. Yokum's Diversion and Storming of the Shangri Jet and Kidnapping of Persons on Board Amounted to Acts of Piracy and Constituted an Illegitimate Use of Force against Shangri in Violation of International Law.

1. Yokum violated the general prohibition on the unilateral resort to force by states.

The principle of the non-use of force in international relations is the "cardinal principle ... belong[ing] to the realm of *jus cogens* ... the very cornerstone of the human effort to promote peace in a world torn by strife."<sup>87</sup> The principle enshrined in United Nations Charter article 2(4) imposes an obligation in international relations to refrain from the threat or use of force against the territorial integrity or political independence of any state or in any manner inconsistent with the purposes of the United Nations. In 1970 the United Nations issued a unanimous restatement of this principle<sup>88</sup> condemning the threat or use of force as a violation of international law and prohibiting acts of reprisals involving the use of force.

The Yokum interception of the Shangri jet and abduction of persons on board were acts of piracy and kidnapping and constitute a *prima facie* violation of

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Supra*, notes 41-45 and accompanying text.

<sup>87</sup> *Nicaragua, supra* note 12, at 151 (sep. op. President Nagendra Singh).

<sup>88</sup> Declaration on Friendly Relations, note 2.

this principle. Yokum's use of armed force against the Shangri jet amounts to an act of aggression.<sup>89</sup>

2. Yokum's use of force was not justified by circumstances which exclude its unlawfulness.

(a) Forcible self-help or counter-measures for the purpose of restoring allegedly violated rights are illegal.<sup>90</sup>

Shangri's alleged failure to carry out its international obligations does not permit Yokum to exercise forcible self-help or vigilante activities. The Declaration on Friendly Relations, adopted by the General Assembly without a vote, specifically prohibits the threat or use of force as a means of solving international disputes.<sup>91</sup> In 1973 the United Nations Security Council unanimously condemned an interception of a civilian aircraft by Israel for a similar purpose, declaring it to be "an illegitimate interference with international civil aviation and violation of the Charter of the United Nations."<sup>92</sup>

(b) Yokum's actions cannot be justified as self-defence.

The United Nations Charter requires an "armed attack" to trigger the right of self-defence.<sup>93</sup> The United Nations Security Council, which is to determine the existence of any threats to international peace or acts of aggression,<sup>94</sup> has been reluctant to treat even a series of terrorist or guerrilla actions as a continuing armed attack.<sup>95</sup> Furthermore, the concept of "armed attack" does not include "assistance to rebels in the form of the provision of weapons or logistical or other support."<sup>96</sup> Accordingly, neither PACM's sequestration of the Hasdrubal for the purposes of

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<sup>89</sup> Article 1 of The Resolution on the Definition of Aggression, *supra* note 6.

<sup>90</sup> McGinley, 52 Tenn. L. Rev. 691, 720 (1985); *Corfu Channel Case* (Gr. Brit. v. Alb.), 1949 I.C.J. 4,5.

<sup>91</sup> Declaration on Friendly Relations, *supra* note 2.

<sup>92</sup> Security Council Resolution 337, U.N. Doc. S/INF/29 (1973).

<sup>93</sup> U.N. Charter, art. 51.

<sup>94</sup> *Id.* art. 39.

<sup>95</sup> Greenwood, *International Law and United States' Air Operation Against Libya*, 89 W. Va. L. Rev. 933, 942 (1987).

<sup>96</sup> *Nicaragua*, *supra* note 12, at 104.

furthering the liberation of their homeland nor Shangri's inability to prevent PACM activities constitutes an armed attack against Yokum.

Two other traditional factors espoused in the *Caroline Case* legitimise the use of force in self defence: necessity and proportionality.<sup>97</sup> Yokum's use of force was not "justified by the sheer necessity of instant actions to save the lives of innocent nationals..."<sup>98</sup> who were in danger from an imminent or continuing armed attack. Yokum had not exhausted pacific means of redress and had not referred the dispute over the custody of the hijackers to the Security Council, nor had Yokum immediately reported the measures taken in the purported exercise of self-defence.<sup>99</sup>

(c) Yokum's actions cannot be characterised as a legitimate reprisal.

Article 2(4) of the United Nations Charter makes "resort to armed reprisals legally impossible."<sup>100</sup> "States have a duty to refrain from acts of reprisal involving the use of force."<sup>101</sup> In its resolution on the Harib Fort incident, the Security Council also condemned reprisals as incompatible with the purposes and principles of the United Nations.<sup>102</sup>

Any legitimisation of forceful reprisals would usurp the power of retribution intended to be reserved to the Security Council.<sup>103</sup> Further, it would encourage unprincipled unilateralism and manipulation of the doctrine, contrary to the modern jurisprudence as espoused by Henkin in the 1986 Friedman Award Address and by the International Court of Justice in *Nicaragua*.<sup>104</sup> This would surely lead to

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<sup>97</sup>1137, 1138; 30 B.F.S.P. 195, 196 (1837).

<sup>98</sup> Waldcock, *General Course on Public International Law*, quoted in Larsen, *The Achille Lauro Incident Incident and the Permissible Use of Force*, 9 Loy. L.A. Int'l & Comp. L. J. 481, 486. (1987)

<sup>99</sup> U.N. Charter, arts. 33, 37, 39 and 51.

<sup>100</sup> E. Zoller, 48 (1984).

<sup>101</sup> Declaration on Friendly Relations, *supra*, note 2.

<sup>102</sup> Security Council Resolution 188, U.N. Doc. S/5649 (1964).

<sup>103</sup> Greenwood, note 95, at 950.

<sup>104</sup> Henkin, *Friedmann Memorial Address; International Law and National Interest*, 25 Colum. J. Transnat'l L. 1-3 (1986); *Nicaragua*,

an escalation in world aggression and "the day would soon dawn when the world would have to face the major catastrophe of a third World War."<sup>105</sup>

B. Yokum's Interception of the Shangri Jet Violated the Key Principle of Non-Intervention in the Affairs of other States and Constituted a Flagrant Aggression Against the Sovereignty of Shangri.

1. Yokum's action against Shangri's territorial integrity was a violation of the Charter of the United Nations and of fundamental principles of international law.

The principle of non-intervention is "the corollary of equality of states and self-determination ... (it) could be recognised as a peremptory norm of customary international law which imposes obligations on all states."<sup>106</sup>

The principle has been enshrined in the Charter of the United Nations and in numerous General Assembly Resolutions declaring international law. These declarations condemn all interventions, direct or indirect, as violations of international law.<sup>107</sup> Similarly in the *Corfu Channel Case*, an alleged intervention for the purposes of securing evidence was dismissed by the International Court of Justice as having no "place in international law, ...whatever be the present defects in international organisation".<sup>108</sup> Yokum has compelled the pilot of the Shangri plane to land in Beilan, forcibly stormed on board and kidnapped passengers under Shangri's care . This clearly violates the non-intervention principle. Furthermore as enunciated by the International Court of Justice in *Nicaragua*, freedom from intervention includes the right of a state to determine its own external affairs.<sup>109</sup> Yokum's action constituted an unlawful intervention in the external affairs of Shangri. Even if the PACM members were guilty of hostage-taking no such forcible intervention is justified by the Hostages Convention: "Nothing in the Convention

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<sup>105</sup> *Nicaragua*, at 151 (sep. op. of President Nagendra Singh.)

<sup>106</sup> *Id.*, at 191 (sep. op. of Judge Sette Camara.)

<sup>107</sup> Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, G.A. Res. 2131 (XX), 20 U.N. GAOR, Supp. (No. 15), U.N. Doc. A/5815 (1966); Declaration on Friendly Relations, *supra* note 11 and Definition of Aggression, *supra* note 74.

<sup>108</sup> *Corfu Channel Case supra* note 90 at 35.

<sup>109</sup> *Nicaragua*, 108.

shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations."<sup>110</sup>

2. Interference with Shangri's aircraft violated Conventions on Civil Aviation and general norms relating to aerial piracy flowing from them.

Under the Chicago Convention to which both Yokum and Shangri are parties without reservation,<sup>111</sup> aircraft carry with them the nationality of their state of registry. Under article 87(1)(b) of the Montego Bay Convention aircraft have freedom of flight over the high seas. The forcible diversion and storming of the Shangri-requisitioned jet violated the aerial piracy conventions which categorically prohibit such forcible interference with civil aviation.<sup>112</sup>

The Conventions do not apply to aircraft used in military customs or police services.<sup>113</sup> Shangri submits that the aircraft requisitioned to carry the PACM members to Saq was not performing any of these functions and hence Yokum's actions constitute a violation of these conventions. Furthermore, although the Tokyo and Hague Conventions specifically refer to offences perpetrated on board an aircraft in flight, article 3(1) of the Hague Convention provides that in the case of a forced landing, "the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board."<sup>114</sup> The Shangri jet would thus be deemed to be in flight until the Beilan authorities took control. Even if the forcible diversion escapes the prohibitions of the conventions, the forcible storming by Yokum troops cannot. They did "... unlawfully, by force or threat thereof, or by any other form of intimidation, seiz[e],

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<sup>110</sup> Article 14 of the Hostages Convention, *supra* note 19.

<sup>111</sup> Article 17 of Convention on International Civil Aviation, *opened for signature* at Chicago, 7 Dec.1944, 15 U.N.T.S. 295.

<sup>112</sup> Convention on Offences and Certain Other Acts Committed on Board Aircraft, *opened for signature* at Tokyo, 14 Sept. 1963, 704 U.N.T.S. 219, 20 U.S.T. 2941, T.I.A.S. 676, 2 ILM 1042 (1963); *Convention for the Suppression of Unlawful Seizure of Aircraft*, *opened for signature* at The Hague, 16 Dec. 1970, 860 U.N.T.S. 105, 22 U.S.T. 1642, T.I.A.S. 7192, 10 I.L.M. 133 (1970).

<sup>113</sup> Article 1(4) of the Tokyo Convention, *supra* note 112; article 3(2) of the Hague Convention, *supra* note 112.

<sup>114</sup> Article 3(1) of The Hague Convention, *supra* note 112.

or exercis[e] control of [that aircraft]...".<sup>115</sup> Yokum by this definition is guilty of an act of hijacking.

3. Kidnapping and abductions are prohibited by customary international law. International kidnapping demonstrates contempt for territorial sovereignty so vital to world order.<sup>116</sup> Yokum as a member of the United Nations has breached its responsibility to respect the sovereignty of other nations and to abide by the tenets of customary international law. Ancient legal principles prohibit resort to extraordinary measures until ordinary means fail and maintain that lawful jurisdiction must flow from lawful means.<sup>117</sup> Yokum did not exhaust ordinary means before using force to gain custody of the PACM members. Furthermore, kidnapping violates Human Rights principles enshrined in the United Nations Charter which include the rights to 'life liberty and the security of persons' and freedom from 'arbitrary arrest, detention or exile.'<sup>118</sup> State-sponsored kidnapping is not a legal alternative to extradition and sound reasons militate against its legitimisation.<sup>119</sup>

C. Appropriate Reparations Requested by Shangri include the Return of the Persons Illegally Detained.

In cases of illegal abduction the Security Council has resolved that return of those illegally abducted is the appropriate reparation. Had Israel's abduction of Eichmann not been resolved, the reparation owed to Argentina would have included his return.<sup>120</sup> Argentina put forward a draft resolution culminating in Israel's obligation "... to make appropriate reparation in accordance with the Charter

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<sup>115</sup> *Id.* article 12.

<sup>116</sup> D. Greig,

<sup>117</sup> As encapsulated in the Roman maxims *ex injuria jus non oritur, nunquam decurritur ad extraordinarium sed ubi deficit ordinarium.*

<sup>118</sup> U.N. Charter arts. 3, 9; *see also* Universal Declaration of Human Rights, G.A. Res. 217A (III), 3 U.N. GAOR 135, U.N. Doc. A/810/1998 (1948).

<sup>119</sup> Grassie, 64 Wash. U.L.Q. 1205, 1213 (1986).

<sup>120</sup> O'Higgins, 36 Brit. Y.B. Int'l L. 279, 295-96 (1960).

of the United Nations and the rules of international law."<sup>121</sup> Argentina saw this obligation as including the return of Eichmann. The resolution was accepted, unopposed by Israel, with the addition of a provision noting the exceptional magnitude of Eichmann's war crimes.

In the *Savarkar Case*<sup>122</sup> the tribunal implicitly recognised the availability of the remedy of return of prisoners illegally abducted, although this remedy was not ordered because the injured state, France, had mistakenly assisted the 'abduction'. Both cases can be distinguished on the facts from the present case. PACM's actions were not exceptional as unique crimes justifying continued detention, trial and execution as in Eichmann's case. Shangri as the injured state has in no way assisted the illegal abduction as in the *Savarkar Case*. Thus it is submitted that Yokum's breach of international law entitles Shangri to reparations under the principle of *restitutio in integrum*. In order to "re-establish things to their previous state as if the act had never been committed",<sup>123</sup> Yokum is required to return the persons whom it had illegally abducted.

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<sup>121</sup> Security Council Resolution 134, U.N. Doc. S/4336 (1960); see also Security Council Resolution 138, U.N. Doc S/4349 (1960).

<sup>122</sup> *Savarkar Case* (Fr. v. Gr. Brit.), Hague Ct. Rep. (Scott) 275 (Perm. Ct. Arb. 1911).

<sup>123</sup> R. Bledsoe & H. Boczek, *The International Law Dictionary* 55 (1987).

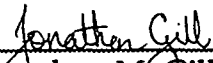
CONCLUSION AND PRAYER FOR RELIEF


The Confederation of Shangri respectfully requests that this Court:

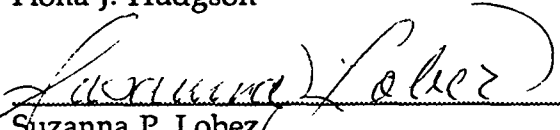
1. declare that the Republic of Yokum has violated international law by forcibly diverting a Shangri aircraft and abducting persons on board, and order the return of those individuals;

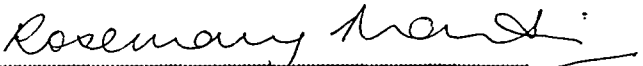
2. declare that the Republic of Shangri is justified in releasing the PACM hijackers.

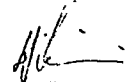
Respectfully submitted,

  
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Fiona J. Hudgson

  
Suzanna P. Lobe

  
Rosemary E. Martin

  
Daryl J. Williams