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1988 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

Case Concerning State Responsibility for
Certain Acts of Terrorism

Republic of Yokum

v.

Confederation of Shangri*

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 Article 36, paragraph 1, of the Statute of the Court. No question of the jurisdiction of the Court is at issue. Appendix 1 contains a list of relevant treaties to which both States are Parties. The Applicant is the Government of the Republic of Yokum. The Respondent is the Government of the Confederation of Shangri.

This is a hypothetical problem drafted exclusively for use in the 1988 Jessup Competition. The Problem is not intended to portray actual situations.

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THE PROBLEM

On 13 February 1987, the Beilan-registered cruise ship Hasdrubal set sail at 13:00 hours from Port al-Haj, Saq, carrying 350 passengers -- more than 200 of whom were nationals of the Republic of Yokum. The remaining passengers represented 10 other nationalities. The crew members were all Beilan nationals.

Shortly after 18:00 hours, when the ship was in international waters in the Medford Sea, seven members of the People's Armed Conflict Movement (PACM), armed with automatic weapons and explosives, seized control of the ship. One passenger, a Yokum national, and two crew members were killed during the takeover. Two of the hijackers had boarded at Port al-Haj; the others had boarded the Hasdrubal at the previous port of call, Taluba, Shangri, where PACM maintained its headquarters. The nationality of the hijackers is unknown.

PACM is a well-organized group of self-proclaimed "freedom fighters" attempting to establish itself as a Government in territory now ruled by the State of Midbari. Because Midbari is a prosperous, militarily-strong, developed country, PACM launches raids against it from the territory of Midbari's neighboring States, especially Shangri. PACM, however, does not hold or control any territory as such. Four States recognize PACM as the government-in-exile of the State of Midbari, whereas over 140

States recognize the effective Government of Midbari as the legitimate Government and, through it, conduct diplomatic relations with Midbari.

For more than 48 hours, the cruise ship aimlessly wandered in international waters as the hijackers exploited the occasion for PACM's propaganda. Among other things, the hijackers told journalists (via the ship's radio) that they were "soldiers fighting for the liberation of Midbari -- our homeland which is under alien occupation." At another point, the group's leader, Dr. Murpharius, stated that he was "acting strictly under orders from my superiors at PACM headquarters in Taluba." Dr. Murpharius assured reporters that "no harm would come to the remaining passengers, who are prisoners of war, unless they try to escape or unless a rescue attempt is made." Later in the day, PACM headquarters in Taluba issued the following communique:

Earlier today, seven heroes of the Revolution seized control of the imperialist ship Hasdrubal. PACM directed this military operation and claims credit for this act of hostilities. Our goal is to demonstrate to the world PACM's determination and ability to wage the armed conflict for the liberation of our homeland.

Meanwhile, Yokum dispatched a submarine and two guided-missile destroyers to follow the cruise ship with orders "to be ready to attempt a rescue operation." A unit of the Yokum Navy's highly-trained, anti-terrorist "Tiger" strike team was airlifted to the Yokum aircraft carrier Jimenez, also in the general vicinity. No other State ordered military units into the area, although several easily could have done so. Because of the

danger to the passengers and crew, no rescue attempt was made.

At 17:00 hours, 15 February, an order was radioed from PACM headquarters to the hijackers stating that they had achieved their mission. Upon receipt of the order, the hijackers instructed the Captain of the Hasdrubal to bring the ship to port in Taluba.

During this period, all of Shangri, and especially Taluba, was in a state of near anarchy as a result of armed conflict between two religious groups struggling for political control of the State. The struggle shattered the once prosperous economy of this small developing country. In addition, the confusion caused by the struggle allowed PACM to operate relatively undisturbed. PACM has launched attacks against other States from Shangri territory on numerous occasions. After each attack, the perpetrators would return to Shangri, where they remained unmolested. Several States, including Yokum, had informed the Shangri Government through diplomatic channels of the activities of PACM and the whereabouts of the perpetrators of particular acts of violence against Yokum nationals and economic interests. The Shangri Government acknowledged the existence of the situation but refused in each case to take any action, citing its lack of effective control over parts of its territory, including parts of the City of Taluba.

Back on the ship, the Captain of the Hasdrubal radioed for permission to dock in Taluba but was refused permission by the Harbormaster. Under threat of death by Dr. Murpharius, the Captain informed Taluba's Harbormaster the ship was coming in

without permission. The Captain also informed Taluba's Harbormaster that the hijackers were demanding that the Shangri Government grant them asylum or they would begin killing the passengers on the ship. After consulting with the Shangri Government, the Harbormaster informed the Captain that the request would be granted. These communications were intercepted by Yokum intelligence sources. Shortly thereafter, the Yokum Ambassador informed the Shangri Foreign Minister that, when the ship entered the port of Taluba, the Government of Yokum expected the Government of Shangri "to honor its international obligations and to arrest the perpetrators and free the hostages and ship."

Approximately six hours passed before the Hasdrubal reached port. When the ship docked, the hijackers were greeted by a wildly enthusiastic group of members and supporters of PACM. The hijackers were taken to PACM headquarters where they were received as heroes. The entire affair was covered by a rather large contingent from the international press corps and received wide-spread publicity around the world. However, at dawn the next day, Shangri troops arrested the seven hijackers and put them in a prison under the control of the Shangri Government.

Two days later, the Yokum Ambassador handed a Diplomatic Note to the Shangri Foreign Minister demanding the extradition of the seven hijackers. The Diplomatic Note called to the Government of Shangri's attention the fact that, although there was no bilateral extradition treaty between Yokum and Shangri, both States are Parties to the four 1949 Red Cross Geneva Conventions on the laws of war and the Convention Against the Taking of

Hostages. The Note stated in relevant part that:

The 1949 Geneva Conventions require States Parties to cooperate to suppress war crimes and crimes against humanity. The Geneva Conventions require a State to search for and bring persons alleged to have committed a "grave breach, "regardless of their nationality, before its own courts or to extradite such persons for trial to another High Contracting Party concerned. Moreover, "compelling a protected person to serve in the forces of a hostile power," "wilful killing" and "taking of hostages" are "grave breaches" of the fourth Convention. Similarly, the Hostages Convention requires States Parties to cooperate to suppress hostage-taking by extraditing or trying the alleged offenders "without exception whatsoever and whether or not the offence was committed in its territory." Consequently, the Government of the Republic of Yokum demands the Confederation of Shangri honor its international obligations by trying or extraditing to the Republic of Yokum the seven hijackers now in custody of the Government of the Confederation of Shangri in Taluba.

Three days later, the Saq Ambassador to Shangri handed a similar Diplomatic Note to the Shangri Foreign Minister, demanding the extradition to it of the hijackers. However, the President and Minister of Justice of Saq stated to the news media on the same day that "these heroes of the Revolution are obviously innocent. We seek their extradition in order to have the honor of setting them free."

On 1 March, a government-requisitioned Shangri National Airlines aircraft took off from Taluba bound for Saq with Dr. Murpharius and two other hijackers aboard. When the Shangri plane was well over international waters, Yokum fighters from the Jimenez intercepted it and forced it to land in Beilan. Yokum Tigers then stormed the plane at Beilan Airport and captured the

hijackers. They were handcuffed and put onto a military transport plane, under heavy guard, and flown directly to Abnera, Yokum's capital. A Yokum Justice Department spokesman announced that the hijackers would be put on trial in a proper Yokum court. Although the four 1949 Red Cross Geneva Conventions had been ratified by Yokum, their provisions as such have not been enacted as municipal law by the Yokum legislature. Both Shangri and Yokum have enacted into municipal law legislation giving effect to the Hostages Convention.

The Government of Shangri demanded the return to it of the hijackers and stated that, in retaliation for the flagrant violation of international law by Yokum in hijacking a Shangri aircraft, the remaining hijackers had been granted political asylum and accorded safe haven in Shangri. They were released from custody by the Shangri Government and continued to reside in Taluba.

On 1 April 1987, the Governments of the Republic of Yokum and the Confederation of Shangri, in accordance with Article 40 of the Statute of the Court and Article 38 of the Rules of the Court, notified the Registrar of the International Court of Justice that they were submitting the matter by special agreement to the jurisdiction of the Court under Article 36, paragraph 1, of the Statute of the Court. On 15 May 1987, the Shangri and Yokum Governments agreed to submit the following questions to the Court:

The Government of the Republic of Yokum asks the Court to:

- I. Declare that the Confederation of Shangri is bound to try or extradite the hijackers; and
- II. Declare that the Confederation of Shangri has violated minimum standards of state responsibility by allowing its territory to be used as a base for attacks on Yokum nationals both in Shangri and elsewhere.

The Confederation of Shangri asks the Court to:

- I. 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; and
- II. Declare that the Republic of Shangri is justified in releasing the PACM hijackers.

APPENDIX 1

Treaties to Which Both the Republic of Yokum and the
Confederation of Shangri are Parties Without Reservation

United Nations Charter.

Statute of the International Court of Justice.

Convention on International Civil Aviation, signed at Chicago, 7 December 1944, 15 U.N.T.S. 295, T.I.A.S. 1591, 3 Bevans 944, 61 Stat. 1180.

Convention (I) for the Amelioration of the Condition of Wounded and Sick Armed Forces in the Field, signed at Geneva, 12 August 1949, 75 U.N.T.S. 31, 6 U.S.T. 3114, T.I.A.S. 3362.

Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, signed at Geneva, 12 August 1949, 75 U.N.T.S. 85, 6 U.S.T. 3217, T.I.A.S. 3363.

Convention (III) Relative to the Treatment of Prisoners of War, signed at Geneva, 12 August 1949, 75 U.N.T.S. 135, 6 U.S.T. 3316, T.I.A.S. 3364.

Convention (IV) Relative to the Protection of Civilian Persons in Time of War, signed at Geneva, 12 August 1949, 75 U.N.T.S. 287, 6 U.S.T. 3516, T.I.A.S. 3365.

Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo, 14 September 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, signed at The Hague, 16 December 1970, 860 U.N.T.S. 105, 22 U.S.T. 1642, T.I.A.S. 7192, 10 ILM 133 (1971).

Convention for the Suppression of Unlawful Acts
Against the Safety of Civil Aviation, signed at
Montreal, 23 September 1971, 974 U.N.T.S. 177, 24 U.S.T.
564, T.I.A.S. 757, 10 ILM 1151 (1971).

Third United Nations Convention on the Law of the
Sea, signed at Montego Bay, 10 December 1982, U.N.
Doc. A/CONF.62/122 and Corr. 1 to 11, 21 ILM
1261 (1982).

Convention Against the Taking of Hostages, done at
New York, 17 December 1979, U.N. Doc. A/Res.34/146
(1979), 28 ILM 1457 (1979).