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CONGRESS OF  
INTERNATIONAL LAW SOCIETIES  
PHILIP C. JESSUP  
INTERNATIONAL LAW  
MOOT COURT COMPETITION  
CONFERENCE OF  
INTERNATIONAL LAW JOURNALS

## 1994 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

### CASE CONCERNING THE GRANTING OF REFUGEE STATUS

**Freedonia**

v.

**Balboa**

The Applicant is the Government of Freedonia. The Respondent is the Government of Balboa. Both States have made declarations under Article 36(2) of the Statute of the International Court of Justice. Both States are members of the United Nations, and each is a party to the Vienna Convention on the Law of Treaties. Balboa is a signatory to the 1989 United Nations Convention on the Rights of the Child.

The 1994 Jessup Competition problem was written by Dr. Rebecca M.M. Wallace, Reader in Law, University of Strathclyde, Glasgow, Scotland. Review and comments by Tony Aust, Legal Counsellor, Foreign and Commonwealth Office, London; George C. Summerfield, Pennie & Edmonds, Washington, D.C.; and Brett J. Lorenzen, Executive Director, International Law Students Association.

## **THE PROBLEM**

1. Draconia is a relatively well-developed State, with a good standard of living and an efficient representative government and infrastructure. The Draconian government was dismayed when world events in the late 1980s led to increasing demands for greater political and cultural rights to be granted to minority groups, of which there are a number within Draconia. In an effort to discourage the political activity of these groups in Draconia, and to maintain domestic tranquillity, the Draconian government adopted a series of increasingly harsh policy measures directed generally at minority groups.

2. Draconia's minority right policies were heavily criticized internally by Hilary Pankhurst, a prominent international minority rights lawyer and citizen of Draconia. As a member of the executive board for the Committee on Rights for Women, a nationally based organization with some twenty groups operating on a regional and local level, Hilary's views were widely disseminated within the country and, to some extent, internationally. However, because Hilary was able to maintain a high international profile, she had never personally suffered any repressive measures at the hands of the Draconian authorities.

3. In April of 1993 Hilary received an invitation to deliver a paper at the International Conference on the Protection of Minority Rights, being held the following month in the neighbouring state of Balboa. Upon receipt of the invitation, Hilary applied to the appropriate Draconian agencies for the necessary authorization to leave the country. Her request was granted, and she was given a temporary exit visa valid only for the specific purpose of attending the conference. Thus, in early May, Hilary's husband Rousseau and eight-year-old daughter Emily drove her to the airport and she left for her two-week stay in Balboa.

4. One week later, Hilary presented her paper to the conference of delegates from around the world, and was highly critical of Draconia's policies toward minority groups throughout her speech. Hilary's speech was heavily covered by the international media, and she also made available to the media and other international human rights organizations several reports prepared by the Committee on Rights for Women detailing a variety of human rights abuses allegedly occurring within Draconia.

5. Hilary continued in the spotlight through the remainder of the conference, which concluded on schedule. On the eve of her intended return to Draconia, however, Hilary received a cable from her husband notifying her that their apartment had been searched and ransacked by the police, and that many of her papers and personal documents, including her research papers and duplicate passport, had been confiscated. In light of these events, and fearing repercussion upon her return to Draconia, Hilary applied the following morning to the Balboan immigration authorities for permission to remain in Balboa for an indefinite period of time.

6. Her application was initially refused, however, on the preliminary grounds that she did not "fulfil the necessary criteria for characterization as a refugee as articulated in the 1951 Geneva Convention on Refugees, or the 1967 Protocol to that Convention." The international press, who were now closely following the story, were quick to point out however that Balboa was not a party to either of those conventions. In response, the Balboan Minister of Immigration stated that, while Balboa was not a party to the conventions, the guidelines contained in them were, as far as their government was concerned, "generally accepted international law." As such, they served as a legitimate means of assessing the claims of refugees. Balboa's Minister of Immigration also made an announcement to the domestic legislature to the effect that Balboa, because of its "best interests", did not wish to establish a precedent in this area, nor harm friendly relations with Draconia, with which Balboa shared a common border.

7. The Balboan Ministry of Immigration made a final decision on Hilary's application in early June stating that, as the domestic policies and living situations in Draconia were not such that they were likely to give rise to any legitimate claims of asylum by Draconian citizens, Balboa would be willing to negotiate Hilary's return and repatriation to Draconia. Hilary continued to plead publicly that such an action would violate the international legal principle of *non-refoulement*, and that if repatriated she would not only fear political persecution, but that she would also risk apprehension and prosecution for what now amounted to a substantial violation

of the terms of her exit visa. In the meantime, Hilary's husband Rousseau and daughter Emily were placed under house arrest in Draconia. It was only several days, however, before friends of the family helped the pair to escape, smuggling them via a difficult and dangerous mountain crossing into Balboa, where they were to be reunited with Hilary.

8. Upon learning of what had transpired, the Balboan officials immediately arrested all of the family members before they could be reunited. Hilary was held on the grounds that the Balboan government was obliged to ensure that she did not leave the country illegally pending her return to Draconia, while Rousseau and Emily were detained for having entered Balboa unlawfully. Rousseau, although not a Draconian national, possessed a right of residence in Draconia because of his marriage to Hilary. His application to the Balboan authorities on behalf of himself and Emily for leave to remain in the country was refused on the grounds that: (a) they had not applied for the appropriate visas before leaving Draconia and that they should return to Draconia to fulfil the necessary procedural requirements; and (b) like Hilary, they did not qualify for treatment as refugees under contemporary international law.

9. Hilary and Rousseau were then placed in a refugee "hotel". Here, Hilary found that they were not alone in being detained. Also residing at the "hotel" were several hundred men and women from Laboria, a less-developed state neighbouring Balboa which had for several years been engaged in a violent civil war. The refugees had been living in the "hotel" since the previous summer, when they fled the civil strife and consequent massive human rights violations which were occurring in their country, crossed into Balboa with their families, and claimed asylum. Hilary quickly learned that their applications for asylum, too, had been denied because they were not considered refugees as defined in the Geneva Convention and Protocol. They had not been returned, however, because the appropriate government agencies responsible for undertaking their return were not apparently functioning in war-torn Laboria.

10. The conditions in the "hotel" were less than ideal — refugees were crowded into small, dimly lit sleeping rooms, were permitted limited freedom of movement, and were provided a

meagre supply of very basic food. Husbands and wives were housed in separate quarters, and the children, including Emily, had been placed as wards of the State in the homes of Balboan foster parents (most of whom spoke only their native Balboan language). Hilary, because of the attention she continued to receive from the international community, quickly became a heroine among the refugees, drawing international attention to their plight. International human rights advocates addressed the case in great detail, making frequent reference to the particular fact that Balboa's actions had, in effect, rendered the refugees "stateless", and had deprived Hilary and the others of their right to "family life." Balboan officials maintained throughout that the refugees were being held under conditions slightly better than those prevailing generally in Balboa's prisons.

11. As the stalemate continued, international pressure from human rights groups and governments led to increasing calls for action to resolve the "intolerable situation" involving Hilary and her family, as well as that of the Laborian refugees. Such action came in mid-July when Freedonia, a sympathetic third State and ardent protector of human rights, intervened in the case and declared its willingness to provide a new home for Hilary, her family, and in this one instance, for the Laborian refugees presently in Balboa. The current Freedonian government, during its three years in power, had gained an international reputation for its readiness to sign and ratify principal international human rights conventions. This had been acclaimed by a number of developing countries as a demonstration of international cooperation and humanitarian responsibility. Hilary, her family and the Laborian refugees expressed to members of the international media a willingness to accept Freedonia's generous offer.

12. Balboa, concerned about the potential public relations damage Hilary could do if released — and not wishing to concede that its domestic policies were in any way questionable — refused Freedonia's offer. The Freedonian Ministry of State then initiated proceedings before the International Court of Justice against Balboa demanding the release of Hilary, her family, and the Laborian refugees. The case was Freedonia's first before the International Court, having agreed only the previous January to the Court's jurisdiction. Freedonia's acceptance of the

Court's jurisdiction under Article 36(2) of the Statute of the Court stated that Freedonia would accept such jurisdiction "with respect to all disputes arising after 4 June 1993, except those which relate to matters which are essentially within its national jurisdiction, as determined by the government of Freedonia."

13. Balboa, under somewhat intense international public pressure, consented to appear before the Court and to have the issue settled once and for all. Their first action thereafter was to file a preliminary objection to the Court's jurisdiction in the matter in August of 1993. The following month the Court released a communiqué stating that it had decided to join the actions (the merits and the objection to jurisdiction), and ordered the parties to proceed accordingly. The Draconian authorities remained silent throughout the initial proceedings, and issued no public objection or statement regarding the matter, nor did they take any steps to intervene in the actions before the International Court.

14. Freedonia asks the Court for a declaration:

- 1) that the Court possesses jurisdiction; and
- 2) that, as Balboa is not properly ensuring the protection of the internationally guaranteed rights of Hilary, her family, and the Laborian refugees, international law requires the transfer of the refugees to the control of Freedonian authorities.

15. Balboa asks the Court for a declaration:

- 1) that the Court possesses no jurisdiction over the subject matter of the dispute; and
- 2) even if the Court has jurisdiction, Balboa has accorded treatment to the refugees which complies with that demanded by international law.

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## CLARIFICATIONS TO THE 1994 JESSUP COMPETITION PROBLEM

### Case Concerning the Granting of Refugee Status

#### Freedonia v. Balboa

The authors of the Problem, Dr. Rebecca M.M. Wallace and Anthony Aust, have reviewed the clarification requests and have issued the following clarifications to the 1994 Jessup Competition Problem:

All requests for clarifications submitted by participating teams have been given due consideration. Not all have received a response. Participants should remember that the Problem has been drafted specifically to encourage the optimum exercise of all the skills demanded by the Competition.

1. *What is Hilary's nationality?*

Hilary is, and always has been, a mono-Draconian national.

2. *What is Emily's nationality?*

Emily is a mono-Draconian national.

3. *What is Rousseau's nationality?*

Rousseau is stateless, and resides with his family in Draconia under a right of residence gained through his marriage to Hilary.

4. *What are the requirements of the Draconian government with respect to exit visas?*

The Draconian government requires all of its citizens wishing to leave the country to apply for an exit visa and to give details of their proposed trip.

(continued on back)

5. *What is the "visa" referred to in paragraph 8 of the Problem?*

The visa referred to in paragraph 8 is the entry visa demanded by Balboa.

6. *Do the members of the Balboan family with which Emily was placed by the Balboan authorities speak any language other than their native Balboan?*

No.

7. *What is the scope or meaning of the term "refugees" in paragraph 15(2) of the Problem?*

The term "refugees" in paragraph 15(2) of the Problem is intended as a non-technical reference to Hilary *et al.*