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

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Case Concerning  
Granting of Refugee Status

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Government of Freedonia,  
Applicant,

v.

Government of Balboa,  
Respondent.

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February Term  
1994

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On Submission to the  
International Court of Justice

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MEMORIAL FOR THE RESPONDENT

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### STATEMENT OF JURISDICTION

The Governments of Freedonia and Balboa submit the following matter to the International Court of Justice (ICJ) under declarations made under Article 36(2) of the ICJ statute. Balboa filed a preliminary objection to the ICJ's jurisdiction over the subject matter of the dispute, which the ICJ subsequently joined to the merits of the argument.

### STATEMENT OF FACTS

In May 1993, the State of Balboa hosted the International Conference on the Protection of Minority Rights. (Para. 3) Hilary Pankhurst, a prominent international rights lawyer, and citizen and resident of the neighboring state of Draconia, attended the conference. (Para. 2) The conference had invited Ms. Pankhurst in April to deliver a paper, and Draconia subsequently granted her a two-week exit visa to attend the conference. (Para. 3)

Ms. Pankhurst's presentation to the conference was critical of the Draconian policies toward minorities, and she further provided the international media and human rights organizations with allegations of abuses in Draconia. (Para. 4) The day before her scheduled return to Draconia, Ms. Pankhurst received notice from her husband that Draconian police had searched the apartment and seized several of her personal papers and documents. (Para. 5) Despite the fact she had never personally suffered any repressive measures from the Draconian government, she feared returning to Draconia and applied to Balboan immigration authorities to remain in Balboa. (Para. 2,5)

Balboa refused her application because she did not fulfill the criteria that define a refugee under the 1951 Geneva Convention Relating to the Status of Refugees or its 1967 Protocol. (Para. 6) Al-

though Balboa is not a signatory to that Convention, the Balboan Minister for Immigration, while speaking to the international media, recognized the guidelines contained in the Geneva Convention as "generally accepted international law." (Para. 6) Balboa issued the final decision on Ms. Pankhurst's application in early June. (Para. 7) Balboa considered Draconia's good standard of living, efficient representative government, and infrastructure, and determined Hilary could not legitimately claim asylum. (Para. 1)

Ms. Pankhurst's husband, Rousseau, and daughter, Emily, evaded house arrest in Draconia and entered Balboa illegally. (Para. 7) As with Hilary, Balboa did not consider Rousseau and Emily as refugees under contemporary international law. (Para. 8) Balboa apprehended the Pankhursts and placed them under the custody of the state. (Para. 8)

Balboa housed the adult Pankhursts in a hotel with several hundred Laborians, who had lived in the hotel since the previous summer, when they fled to Balboa due to civil strife in their nation. (Para. 9) Balboa chose to house the Laborians until the proper governmental agencies in Laboria regained their ability to receive their countrymen. (Para. 9) The Laborians also do not fulfill Balboa's interpretation of the refugee criteria, and await return to their nation. (Para. 9) The conditions in the hotel are superior to those generally encountered in Balboan prisons. (Para. 10) Balboa placed Emily and the children of the Laborians into foster homes, until they could be reunited with their families in their home countries. (Para. 10)

In mid-July, Freedonia, a third State with no connection to the Pankhursts or Laborians, requested Balboa to release the Pankhursts and Laborians to them. (Para. 11) After a preliminary refusal from Balboa, Freedonia immediately initiated this action before the ICJ.

(Para. 12) In January 1993 Freedonia consented to the Court's 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." (Para. 12) Under pressure from the international public, Balboa consented to appear before the ICJ, but filed a preliminary objection to the ICJ's jurisdiction in the matter. (Para. 13) Throughout the proceedings, Draconia has remained silent. (Para. 13)

### QUESTIONS PRESENTED

- I. Whether the International Court of Justice has jurisdiction over the subject matter of this dispute, when no treaty-in-force or special agreements compel Balboa to submit to the ICJ's jurisdiction and when Freedonia's declaration under Article 36(2) of the ICJ Statute reserves from the Court matters essentially within Freedonia's domestic jurisdiction and disputes arising before 4 June 1993?
  
- II. Whether Freedonia presents an admissible application when Freedonia has no national link with the Pankhursts and Laborians, and when Freedonia did not attempt to resolve the dispute through alternate methods?
  
- III. Whether Balboa's treatment of the asylum seekers violated international law when Balboa complied with both the 1989 Convention on the Rights of the Child and the 1951 Geneva Convention, provided temporary refuge for the asylum seekers, and acted consistently with the general principle of state sovereignty?

### SUMMARY OF THE PLEADINGS

The ICJ does not have subject matter jurisdiction over this dispute under either Article 36(1) or 36(2) of the ICJ Statute. Because no special agreement exists between the parties, only a treaty-in-force that specially provides for the ICJ can satisfy the requirements of Article 36(1). The 1951 Geneva Convention does not bind Balboa to appear. Neither Freedonia nor Balboa is a signatory to the Geneva Convention. Furthermore, the statements of the Balboan Immigration Minister cannot bind Balboa to the Geneva Convention. The 1989 United Nations Convention on the Rights of the Child, to which Balboa adheres, does not specially provide for ICJ jurisdiction.

Article 36(2) does not provide jurisdiction due to the reservations in the Freedonian declaration. Through reciprocity, Balboa may assert the Freedonian reservations as its own. Consequently, the reservation excludes this matter from the Court's jurisdiction because refugee status determination is essentially within the domestic jurisdiction of Balboa. The dispute also arose prior to 4 June 1993, for purposes of the reservation *ratione temporis*.

Further, the Freedonian application is fundamentally inadmissible. Contrary to international law, Freedonia possesses no national link with the Pankhursts or Laborians. In violation of the spirit of binding treaties, Freedonia refused to explore alternate means of resolution, and improperly used the ICJ as a court of first resort. These reasons individually nullify the admissibility of the Freedonian application.

Balboa's treatment of the asylum seekers complies with the demands of international law. Primarily, Balboa adheres to its obligations under the United Nations Convention on the Rights of the Child. As a signatory, Balboa is bound only to refrain from actions which would

defeat the purpose of the treaty. Because Balboa provided special care and assistance to Emily and the Laborian children, Balboa acted in a manner compatible with the purpose of the treaty. Balboa's treatment also complies with the terms of the 1951 Geneva Convention. The Convention requires assistance for asylum seekers who meet the conventional definition of refugee. As neither group of asylum seekers satisfies the definition, Balboa does not owe them conventional protections.

Balboa has no customary legal obligation of *nonrefoulement* toward the asylum seekers in question. Nevertheless, if Balboa did possess such a duty, Balboa has complied with it by offering them temporary refuge.

Moreover, Balboa's treatment was appropriate considering its interests related to state sovereignty. If the asylum seekers are allowed to transfer to Freedonia, Balboa's economic status and foreign affairs will suffer adverse effects. Balboa must be able to protect these sovereign interests without outside interference. Absent evidence of basic human rights violations in Balboa, Freedonia's intervention and proposed transfer of the asylum seekers is an unjustified interference with Balboa's state sovereignty.

## PLEADINGS AND AUTHORITIES

### I. THE INTERNATIONAL COURT OF JUSTICE DOES NOT HAVE JURISDICTION OVER THE SUBJECT MATTER OF THIS DISPUTE.

The fundamental basis of the ICJ's jurisdiction is the consent of the involved States.<sup>1</sup> States express this consent through a special agreement or a provision contained in a treaty-in-force.<sup>2</sup> Consent also arises from declarations pursuant to Article 36(2) of the ICJ statute, submitting to the ICJ's compulsory jurisdiction.<sup>3</sup> Freedonia's application to the Court lacks this requisite consent.

#### **A. BECAUSE NO TREATY PROVISION BINDS BALBOA TO APPEAR BEFORE THE COURT AS REQUIRED BY SECTION 36(1) OF THE ICJ STATUTE, THE ICJ DOES NOT HAVE JURISDICTION OVER THIS SUBJECT MATTER.**

Article 36(1) of the ICJ Statute enables the ICJ to have jurisdiction when conferred by a specific treaty provision or special agreement between the parties.<sup>4</sup> In this case, neither a treaty-in-force nor a special agreement provide jurisdiction to the ICJ over this subject matter.

1. ARTICLE 38 OF THE 1951 GENEVA CONVENTION RELATING TO THE STATUS OF REFUGEES DOES NOT GIVE THE ICJ JURISDICTION.

The 1951 Convention Relating to the Status of Refugees ("Geneva Convention") specifically confers jurisdiction to the ICJ over the interpretation or application to "[a]ny dispute between parties to [the Geneva] Convention."<sup>5</sup> Because neither Freedonia nor Balboa is a party to the Geneva Convention, this article cannot confer jurisdiction over

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<sup>1</sup> Interhandel (Switz. v. U.S.) 1959 I.C.J. 6, 107.

<sup>2</sup> Statute of the International Court of Justice, June 26, 1945, art. 36(1), 59 Stat. 1055, T.S. No. 933, 3 Bevans 1153, 1176 Y.B.U.N. 1052.

<sup>3</sup> Id., art. 36(2).

<sup>4</sup> Id., art. 36(1).

<sup>5</sup> Convention Relating to the Status of Refugees, Jul. 28, 1951, art. 38, 189 U.N.T.S. 137, 178.

the present matter.

Balboa did not express its binding consent to the Geneva Convention through its Minister of Immigration. According to the 1969 Vienna Convention on the Law of Treaties, only a Head of State, Head of Government or Minister for Foreign Affairs can bind a nation to a treaty without other evidence or confirmation of treaty-making powers.<sup>6</sup> Here, the Balboan Minister of Immigration, without any self-evident treaty-making power, issued a statement recognizing the Geneva Convention's guidelines as international law.<sup>7</sup> Because the Balboan Government did not subsequently affirm his statement, the Immigration Minister could not bind Balboa to the Geneva Convention.

Moreover, even if the Minister of Immigration could bind Balboa, his remarks referred only to the definition of refugee and not to the entire Geneva Convention. The Vienna Convention requires treaty interpretation based on good faith, context, and ordinary meanings.<sup>8</sup> In context, the "guidelines" mentioned by the Minister refer to the criteria for defining a refugee as expressed in Article 1 of the Geneva Convention. His remarks followed questioning by the international press regarding the Balboan government's decision not to grant refugee status to Hilary Pankhurst.<sup>9</sup> Taken in context, and interpreted in accordance with Article 31(1) of the Vienna Convention, the Minister's remarks accept only the definition of refugees as "generally accepted international law." Consequently, the Geneva Convention cannot provide jurisdiction to the ICJ under Article 36(1) of the ICJ Statute.

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<sup>6</sup> Convention on the Law of Treaties, May 22, 1969, arts. 7,8, U.N. Doc. A/CONF. 39/27.

<sup>7</sup> Record, paragraph 6.

<sup>8</sup> Vienna Convention, *supra* note 6, art. 31.

<sup>9</sup> Record, paragraph 6.

2. THE 1989 CONVENTION ON THE RIGHTS OF THE CHILD DOES NOT GRANT JURISDICTION UNDER ARTICLE 36(1) OF THE ICJ STATUTE.

The 1989 United Nations Convention on the Rights of the Child (UNCRC) establishes several guidelines for "improving the living conditions of children in every country."<sup>10</sup> This treaty does not apply to the present dispute, because Freedonia has not signed the UNCRC. Also, even if the UNCRC applies, it does not specially provide for the jurisdiction of the ICJ.

a. Freedonia is not a party to the 1989 Convention on the Rights of the Child.

Although Balboa signed the UNCRC, Freedonia has neither signed nor ratified the UNCRC and cannot enforce its provisions against Balboa. This Court has determined that a signatory to a treaty cannot enforce the treaty's provisions unless it has also ratified the treaty.<sup>11</sup> Accordingly, it follows that a non-signatory to a treaty cannot enforce that treaty's provisions against a signatory. Without this ability to enforce the UNCRC's provisions, Freedonia cannot assert the ICJ's jurisdiction in this matter.

b. The 1989 Convention on the Rights of the Child does not specially provide for the ICJ's jurisdiction.

Even if Freedonia could enforce the UNCRC against Balboa, the ICJ does not provide the proper forum for the dispute. Article 36(1) of the ICJ Statute allows ICJ jurisdiction only when "specially provided" in a treaty-in-force.<sup>12</sup> The UNCRC does not specially provide for the ICJ; in fact, it establishes a special 10-member Committee to oversee

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<sup>10</sup> Convention on the Rights of the Child, Nov. 20, 1989, preamble, 28 I.L.M. 1454.

<sup>11</sup> Concerning Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.) 1986 I.C.J. 14, 130.

<sup>12</sup> ICJ Statute, *supra* note 2, art. 36(1).

the administration of the UNCRC among its party nations.<sup>13</sup> Without the explicit delegation of dispute adjudication to the ICJ through a treaty provision, the ICJ cannot assert its jurisdiction in accordance with Article 36(1) of the ICJ Statute.

**B. THE RESERVATIONS TO THE FREEDONIAN DECLARATION, AS APPLIED BY BALBOA THROUGH THE RIGHT OF RECIPROCITY UNDER ARTICLE 36(2) OF THE ICJ STATUTE, EXCLUDE THE SUBJECT MATTER OF THIS DISPUTE FROM THE COMPULSORY JURISDICTION OF THE ICJ.**

The principle of reciprocity is central to the acceptance of the ICJ's compulsory jurisdiction.<sup>14</sup> Vital to the principle of reciprocity is the notion that "[j]urisdiction exists under the Optional Clause only to the extent that both parties have accepted a common commitment."<sup>15</sup> First, the declaration with the narrower jurisdictional grant becomes the common ground of both parties.<sup>16</sup> In its declaration submitting to the Court's compulsory jurisdiction, Freedonia reserved 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."<sup>17</sup> Balboa, however, included no reservations. Thus, Freedonia's declaration defines the scope of the Court's jurisdiction in this case because its declaration contains the narrower jurisdictional grant.

The principle of reciprocity also allows one State to invoke reservations in the declaration of the opposing State, even though the

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<sup>13</sup> UNCRC, *supra* note 10, art. 43.

<sup>14</sup> Edith Brown Weiss, Reciprocity and the Optional Clause, in The International Court of Justice at a Crossroads 82, 83 (Lori Fisler Damrosch ed., 1987).

<sup>15</sup> Id. at 84.

<sup>16</sup> Id.

<sup>17</sup> Record, paragraph 12.

reservations do not appear in its own declaration.<sup>18</sup> By virtue of the principle of reciprocity, one Nation cannot be bound by the jurisdictional issues reserved by its opposing Nation.<sup>19</sup> Therefore, Balboa may apply the Freedonian reservations at its discretion.

1. THE ICJ DOES NOT HAVE JURISDICTION BECAUSE THE DETERMINATION OF REFUGEE STATUS LIES ESSENTIALLY WITHIN THE DOMESTIC JURISDICTION OF BALBOA.

Freedonia's declaration to the ICJ's compulsory jurisdiction reserved jurisdiction from "matters which are essentially within its national jurisdiction, as determined by the government of Freedonia."<sup>20</sup> The ICJ implicitly recognized the validity of this self-judging reservation and the respondent State's ability to utilize it through reciprocity.<sup>21</sup>

Even the United States, the pioneer of the self-judging reservation, withdrew an application to the Court when the respondent state invoked the reservation through reciprocity.<sup>22</sup> In the Aerial Incident case, the United States discontinued its application to the ICJ when Bulgaria, the respondent State, claimed that the subject matter of the dispute lay essentially within its domestic jurisdiction. Bulgaria relied on the American self-judging reservation, which the United States respected by withdrawing its application. Similarly, Balboa can legitimately use the Freedonian reservation. Because Balboa decided, in good faith, that the determination of refugee status lies within its domestic purview, it properly reserved jurisdiction from this Court.

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<sup>18</sup> Weiss, *supra* note 14, at 85.

<sup>19</sup> Sir Gerald Fitzmaurice, The Law and Procedure of the International Court of Justice 449 (1986).

<sup>20</sup> Record, paragraph 12.

<sup>21</sup> Certain Norwegian Loans (Fr. v. Nor.) 1957 I.C.J. 9.

<sup>22</sup> Aerial Incident of 27 July 1955 (U.S. v. Bulg.) 1960 I.C.J. 146.

a. International treaties firmly establish the place of refugee status determination within the domestic jurisdiction of States.

Although the Geneva Convention casts an international light on the plight of refugees, an international treaty cannot by itself remove the question of refugee status from the sphere of domestic jurisdiction.<sup>23</sup> Prior to 1950, international custom empowered international organizations to make determinations of refugee status.<sup>24</sup> However, the Geneva Convention firmly placed refugee status determination into the hands of individual nations.<sup>25</sup> Furthermore the Geneva Convention neither requires States to establish procedures for refugee determination, nor gives the United Nations High Commissioner on Refugees the jurisdiction to make those determinations.<sup>26</sup> The mere existence of a treaty does not remove the subject matter of the treaty from domestic jurisdiction.<sup>27</sup> Thus, the Geneva Convention does not present a *prima facie* case that refugee status determination lies outside the scope of a State's domestic jurisdiction. Indeed, the absence of firm procedures in its provisions indicate the determination should be a domestic concern.

b. Under general principles of international law, refugee status determination remains in the reserved powers of nations.

General principles of international law, which are common through-

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<sup>23</sup> Interpretation of Peace Treaties with Bulgaria, Hungary and Romania 1950 I.C.J. 65, 112.

<sup>24</sup> James C. Hathaway, A Reconsideration of the Underlying Premise of Refugee Law, 31 Harv. Int'l. L. J. 129, 166-7 (1990).

<sup>25</sup> Id.

<sup>26</sup> Patricia Hyndman, Refugees Under International Law with a Reference to the Concept of Asylum, 60 Austl. L. J. 148, 151 (1986).

<sup>27</sup> Peace Treaties, *supra* note 23.

out the judicial systems of the world's nations<sup>28</sup>, establish refugee status determination as a domestic matter. International law reserves questions of nationality and naturalization to the States.<sup>29</sup> Similarly, the grant of refugee status, often a precursor to residence and naturalization, falls within the domestic jurisdiction of States. "There are few areas of national sovereignty which States are less willing to surrender to international control than the entry of aliens. . . . [T]hey have insisted on defining very precisely the persons who are eligible for [refugee] status and reserving the right to make determinations of status."<sup>30</sup> Thus the principle of controlling nationality and immigration reinforces the assertion that the domestic jurisdiction of Balboa encompasses refugee status determination. Because of this domestic nature, the Freedonian reservation, as applied through reciprocity, precludes the ICJ's jurisdiction.

2. THE DISPUTE AROSE PRIOR TO 4 JUNE 1993, THEREFORE THE RESERVATION *RATIONE TEMPORIS* NULLIFIES JURISDICTION OVER THE SUBJECT MATTER.

The reservation *ratione temporis* in the Freedonian declaration, withholding jurisdiction from disputes arising prior to 4 June 1993, also applies to this matter. In determining when a dispute arises for purposes of these reservations, the Court should look for the first negative reply regarding the specific dispute.<sup>31</sup> Because the refugee status of the asylum seekers comprises the fundamental basis of Freedonia's claim, the Court must examine the first responses that are

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<sup>28</sup> Virally, The Sources of International Law, 143-145 (Sorenson ed., 1968).

<sup>29</sup> Ian Brownlie, Principles of Public International Law, 381 (4th ed., 1990).

<sup>30</sup> G. Coles, Problems Arising from Large Numbers of Asylum Seekers: A Study of Protection Aspects 18-19 (1981).

<sup>31</sup> Interhandel, *supra* note 1, at 21.

dispositive of the Pankhursts' and Laborians' refugee claims. Because they have resided in Balboa for a year, the response to the Laborians certainly came well before the 4 June 1993 deadline. Also, Balboa announced the initial determination of Hilary Pankhurst's status before June 4th, after Hilary's initial application to the Immigration Ministry. Although Freedonia did not enter the situation until mid-July, the crux of their dispute concerns the refugee status of the Pankhursts and Laborians, which Balboa negatively determined prior to 4 June 1993. As a result, the Freedonian reservations exclude the subject matter of this dispute from the jurisdiction of the ICJ.

**II. EVEN IF THE ICJ HAS JURISDICTION OVER THE SUBJECT MATTER OF THE DISPUTE, THE FREEDONIAN APPLICATION IS INADMISSIBLE.**

A State appearing before an international tribunal, must establish both the court's jurisdiction over the case, and its ability to bring the claim.<sup>32</sup> The ability to bring the claim concerns the admissibility of the claim.<sup>33</sup> Assuming the ICJ asserts its jurisdiction over this subject matter in accordance with Article 36(6) of the ICJ Statute, the claim presented by Freedonia is inadmissible.

**A. AN APPLICANT NATION HAS *JUS STANDI* ONLY IF A GENUINE NATIONAL LINK EXISTS BETWEEN THE NATION AND THE REAL PARTIES OF INTEREST.**

Freedonia lacks *jus standi*, the legitimacy of a nation's appearance before an international tribunal, and cannot appear before the Court. Freedonia failed to establish a national link with the Pankhursts and Laborians, and failed to present a compelling reason to justify their intervention on behalf of the Pankhursts and Laborians. Without these, Freedonia cannot demonstrate *jus standi*.

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<sup>32</sup> Brownlie, *supra* note 29, at 477.

<sup>33</sup> Id.

1. FREEDONIA DID NOT BASE ITS REPRESENTATION OF THE PANKHURSTS AND LABORIANIS ON A NATIONAL LINK OR SUBSTANTIAL NATIONAL INTEREST.

Freedonia cannot represent the claims of the Pankhursts and Laborians before the ICJ because no national link exists between them.<sup>34</sup> The Permanent Court of International Justice recognized the long-standing principle requiring a "bond of nationality between the State and individual which alone confers upon the State the right of diplomatic protection."<sup>35</sup> The ICJ clarified this principle by requiring a genuine national link "having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."<sup>36</sup> Freedonia does not have this type of connection with either the Pankhursts or the Laborians, because they share no social attachment or reciprocal rights and duties.

The applicant state must also defend a national right before the ICJ, not simply the rights of individuals. "Diplomatic protection and protection by means of international judicial proceeding constitute measures for the defence of the rights of the State."<sup>37</sup> Freedonia does not faithfully assert any of its rights as a nation before the Court. Their application specifically asks the Court to protect "the internationally guaranteed rights of Hilary, her family, and the Laborian refugees."<sup>38</sup> These rights, whatever they may be, are rights of individuals and not rights of nations. Consequently, Freedonia fails to

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<sup>34</sup> Panevezys-Salstutiskis Railway, 1939 P.C.I.J. (Ser. A/B) No. 76, at 16.

<sup>35</sup> Id.

<sup>36</sup> Nottebohm (Liech. v. Guat.) 1955 I.C.J. 4, 23.

<sup>37</sup> Id. at 24.

<sup>38</sup> Record, paragraph 14.

represent its national interests before the Court and therefore cannot establish *jus standi*.

2. NO EXTRAORDINARY OR COMPELLING REASONS EXIST THAT PERMIT FREEDONIA TO REPRESENT THE PANKHURSTS AND LABOR- IANS.

In exceptional or especially compelling instances, a State may represent the interests of individuals other than nationals before the ICJ.<sup>39</sup> In these cases, a distinction exists between obligations of a State toward the international community, and obligations of a State with respect to another State.<sup>40</sup> Instances meriting special consideration include acts of aggression, slavery, genocide, and basic human rights.<sup>41</sup> Refugee status and rights are separate from basic human rights as evidenced by the manner in which the international refugee regime excludes people who are denied basic human rights such as food, health care, and education.<sup>42</sup>

Even if this Court accords refugee status the same stature as basic human rights, Freedonia may not present the case because "on the universal level, the instruments which embody human rights do not confer on States the capacity to protect the victims of infringements of such rights irrespective of their nationality."<sup>43</sup> In this matter, Freedonia does not defend an obligation toward the international community meriting their representing the Pankhursts and Laborians.

In addition, Draconia's unwillingness to enter the situation does not permit Freedonia to provide representation. In examining the

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<sup>39</sup> Barcelona Traction (Belg. v. Spain) 1970 I.C.J. 3, 32.

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> James C. Hathaway, The Law of Refugee Status 8 (1991).

<sup>43</sup> Barcelona Traction, *supra* note 39, at 47.

rights of States to represent individuals, the ability of the individual's national State to act is of paramount importance.<sup>44</sup> In Barcelona Traction, Belgium attempted to represent the interests of its citizens who were shareholders in a corporation of Canadian citizenship. The ICJ held that although Canada had no interest in protecting the Belgians, Belgium could not intervene because Canada remained competent to represent the shareholders and it retained the ability to exercise diplomatic protection, having discontinued its action of its own free will.<sup>45</sup>

In this case, although Draconia has not expressed any interest in the Pankhursts' situation, it has not forsaken its right to represent their interests in an international forum. Draconia's silence regarding the Pankhursts does not entitle them to Freedonian representation; "the fact cannot in itself constitute a justification for the exercise of diplomatic protection by another government."<sup>46</sup> Thus, Freedonia lacks valid *jus standi* in this matter, and the application to the Court is inadmissible.

**B. FREEDONIA HAS NOT EXPLORED, IN GOOD FAITH, ALTERNATIVE METHODS OF DISPUTE RESOLUTION AS REQUIRED BY INTERNATIONAL TREATIES.**

This Court noted that the "rule that local remedies be exhausted before international proceedings may be instituted is a well-established rule of customary international law."<sup>47</sup> Moreover, the requirement to explore alternative methods of resolution is analogous to

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<sup>44</sup> Id. at 44.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Interhandel, *supra* note 1, at 27.

exhausting local remedies before seeking international redress.<sup>48</sup> Consequently, exploring alternative resolutions of the dispute should be accorded the same weight as exhausting local remedies, with noncompliance being a valid challenge to admissibility.

International treaties concerning the issue before the Court implicitly require a good faith exploration of alternative means to resolve disputes. Article 33 of the United Nations Charter calls for varying methods of peaceful dispute settlement, including negotiation, mediation, and conciliation.<sup>49</sup> Article 66 of the Vienna Convention, to which Freedonia is a party, requires at least one year of dispute resolution in accordance with Article 33 of the UN Charter before disputes concerning general principles of international law are submitted to the ICJ.<sup>50</sup> Article 66 of the Vienna Convention represents an expression of States' desires that extended diplomatic negotiation occur before involving the ICJ.<sup>51</sup> Consequently, the ICJ should not allow Freedonia's premature invocation of their power.

The Vienna Convention also requires contracting parties to uphold the principle of *pacta sunt servanda*, and perform treaty obligations in good faith.<sup>52</sup> Freedonia's lone request for transfer of the aliens and quick action in bringing this case to the Court illustrate an unwillingness to pursue diplomatic solutions in line with her treaty obligations under the Vienna Convention. Affirming the Freedonian application improperly repudiates the well-founded international principle of

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<sup>48</sup> Brownlie, *supra* note 29, at 506.

<sup>49</sup> U. N. Charter, art. 33.

<sup>50</sup> Vienna Convention, *supra* note 6, art. 66.

<sup>51</sup> I.M. Sinclair, The Vienna Convention on the Law of Treaties 133 (1973).

<sup>52</sup> Vienna Convention, *supra* note 6, art. 26.

*pacta sunt servanda*, and improperly excuses Freedonia from her treaty obligations.

Furthermore, the Geneva Convention, whose definition of refugee is the core of this case, implicitly requires alternative means in Article 38 where it states, "Any dispute . . . which cannot be settled by other means, shall be referred to the International Court of Justice."<sup>53</sup> The wording of this article indicates an awareness on the part of the contracting nations that other means must be exhausted before approaching the ICJ for an interpretation of the Geneva Convention. Because Freedonia has not performed this obligation, its application to the Court is inadmissible.

**III. BALBOA'S TREATMENT OF THE ASYLUM SEEKERS COMPLIED WITH INTERNATIONAL LAW IN THAT BALBOA ACTED IN A MANNER COMPATIBLE WITH THE OBJECT OF THE 1989 CONVENTION ON THE RIGHTS OF THE CHILD.**

Balboa is a signatory to the 1989 Convention on the Rights of the Child (UNCRC).<sup>54</sup> The Convention itself provides for signature subject to ratification.<sup>55</sup> This means that Balboa must ratify the UNCRC, in addition to signing it, in order to effectively bind itself to its terms. As this court stated, "ratification of a treaty which provides for ratification is an indispensable condition for bringing it into operation."<sup>56</sup>

During the time pending ratification, signature creates a "provisional status" for the signatory without rendering it a party.<sup>57</sup> Provisional status entails a good faith obligation to refrain from

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<sup>53</sup> Geneva Convention, *supra* note 5, art. 38 [emphasis added].

<sup>54</sup> Record, title page.

<sup>55</sup> UNCRC, *supra* note 10, arts. 46-47.

<sup>56</sup> Ambatielos (Greece v. U.K.) 1952 I.C.J. 28, 43.

<sup>57</sup> Reservations to the Convention on Genocide, 1951 I.C.J. 28, 43.

action which would defeat the object of the treaty.<sup>58</sup> In other words, a signatory, although not bound to the treaty, must still act in a manner generally "compatible" with the purpose of the treaty.<sup>59</sup>

The UNCRC provides protections for children. Its purpose is to ensure that children receive special care and assistance."<sup>60</sup> By placing Emily and the Laborian children in homes with Balboan families, Balboa guarantees that the children receive the "special care and assistance" that the UNCRC demands. Private families will provide a better environment for the children than the refugee "hotel." Although separated from their natural parents, this is only a temporary situation until the asylum seekers return to their respective countries.

IV. BALBOA'S TREATMENT OF THE ASYLUM SEEKERS COMPLIED WITH INTERNATIONAL LAW REGARDING THE STATUS AND TREATMENT OF REFUGEES.

Balboa's treatment of the asylum seekers complied with conventional, customary and general principles of international law. The 1951 Convention does not obligate Balboa to assist the asylum seekers in this case because they fail to meet the conventional definition of refugee. Similarly, customary international law does not require that Balboa give them any special protections. Finally, Balboa has correctly applied the general principle of state sovereignty in its treatment of the asylum seekers. Therefore, Freedonia's intervention in this matter is unjustified.

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<sup>58</sup> Vienna Convention, *supra* note 6, art. 18.

<sup>59</sup> B. Cheng, General Principles of Law as Applied by International Courts and Tribunals 127 (1987).

<sup>60</sup> UNCRC, *supra* note 10, Preamble, paragraph 4.

**A. THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES DOES NOT REQUIRE BALBOA TO PROTECT THE PANKHURSTS OR THE LABOR- IANS BECAUSE THEY DO NOT MEET THE DEFINITION OF REFUGEE.**

Balboa is not a party to the 1951 Geneva Convention Relating to the Status of Refugees<sup>61</sup> (Geneva Convention). However, Balboa recognizes that the Geneva Convention represents the primary legal source of international refugee protection.<sup>62</sup> The Geneva Convention, as amended by the 1967 Protocol,<sup>63</sup> narrowly defines a refugee as:

...any person who...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...<sup>64</sup>

The protections outlined in the Geneva Convention apply to a limited class of political refugees who fear persecution due to their civil or political status.<sup>65</sup> States have no obligation to provide for asylum seekers who fall outside the scope of this definition of refugee.<sup>66</sup> Thus, Balboa has no conventional obligation to protect to the Pankhursts or the Laborians because they do not qualify as Convention refugees.

**1. THE PANKHURSTS DO NOT POSSESS THE REQUISITE WELL-FOUNDED FEAR.**

Determination of a well-founded fear requires both subjective and

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<sup>61</sup> Geneva Convention, *supra* note 5.

<sup>62</sup> Record, paragraph 6.

<sup>63</sup> Protocol Relating to the Status of Refugees, January 31, 1967, 606 U.N.T.S. 267.

<sup>64</sup> Geneva Convention, *supra* note 5, art. 1(A)(2).

<sup>65</sup> Hathaway, *supra* note 42, at 10; A. Grahl-Madsen, International Refugee Law Today and Tomorrow, 20 *Archiv des Volkerrechts* 411, 421 (1982).

<sup>66</sup> K. Hailbronner, Nonrefoulement and "Humanitarian" Refugees: Customary International Law or Wishful Legal Thinking? 26(4) *Va. J. Intl. L.* 857, 859 (1986).

objective assessment.<sup>67</sup> Objective factors receive particular emphasis because a genuine prospect of persecution exists regardless of the degree to which a person subjectively fears it.<sup>68</sup> For example, a strong individual will not exhibit the same degree of subjective fear as a weak individual. However, objective factors, such as the political climate in one's country, remain constant. Therefore, objective factors contribute to a more dependable evaluation of a well-founded fear.

A person must ultimately show either "good reasons" indicating a "reasonable degree of likelihood" of future persecution, or victimization of past persecution.<sup>69</sup> The objective facts of the Pankhursts' situation fail to demonstrate these requirements. Draconia, a well-developed State, maintains a representative government and a good standard of living.<sup>70</sup> Such political and social climates generally do not foster governments which tend to persecute their citizens.<sup>71</sup> Thus, future persecution of the Pankhursts is unlikely.

Also, the Pankhursts have never themselves suffered persecution at the hands of the Draconian authorities. Hilary submitted allegations of human rights abuses at the Balboan conference.<sup>72</sup> However, the record does not provide evidence supporting the veracity of these allegations.

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<sup>67</sup> G. Melander, The Protection of Refugees 18 *Scandinavian Studies in Law* 153, 158 (1974); Y. Shimada, The Concept of the Political Refugee in International Law 19 *Japanese Annual of International Law* 24, 33 (1975).

<sup>68</sup> A. Grahl-Madsen, The Status of Refugees in International Law, v.1, 174 (1966).

<sup>69</sup> Id. at 176; R. v. Secretary of State for the Home Department, ex parte Sivakumaran, (1988) 1 All. E.R. 193 (H.L.) at 197-98.

<sup>70</sup> Record, paragraph 1.

<sup>71</sup> Melander, *supra* note 67, at 159.

<sup>72</sup> Record, paragraph 4.

Even if some abuses did indeed occur, the record shows that Hilary and her family have been exempt from any oppressive measures.<sup>73</sup> Despite Hilary's outspoken criticism of Draconian policies, the authorities made no effort to suppress her or prevent her from speaking at the Balboan conference. Therefore, the objective facts indicate that the Pankhursts' fears are not well-founded.

2. THE TREATMENT THAT THE PANKHURSTS FEAR IS NOT SUFFICIENTLY SEVERE TO CONSTITUTE PERSECUTION.

In order to satisfy the persecution element of the Convention definition, a person must show a danger to life or limb, or a threat to physical freedom for more than three months.<sup>74</sup> In this case, Draconian authorities searched the Pankhurst apartment, confiscated Hilary's personal documents,<sup>75</sup> and placed Rousseau and Emily under house arrest for a few days.<sup>76</sup> The search and confiscation of documents did not create a danger that the Pankhursts would either be killed or injured. Nor was the house arrest long enough to represent a threat to the Pankhursts' long term physical freedom. None of these actions meets the conventional persecution standard.

Further, prosecution for a violation of laws does not amount to persecution in the Convention sense<sup>77</sup> unless its severity is "grossly disproportionate to the offence."<sup>78</sup> Hilary stated that she fears

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<sup>73</sup> Record, paragraph 2.

<sup>74</sup> Grahl-Madsen, *supra* note 65, at 422-23.

<sup>75</sup> Record, paragraph 5.

<sup>76</sup> Record, paragraph 7.

<sup>77</sup> G. Goodwin-Gill, The Refugee in International Law 31-33 (1989).

<sup>78</sup> R. Plender, International Migration Law 418 (1983).

prosecution for violation of Draconian visa requirements.<sup>79</sup> There is no evidence to suggest that Draconia intends to subject the Pankhursts to any punishment. Even if this were to occur, there is also no evidence that Draconia take action "grossly disproportionate" to the Pankhursts' offenses. Therefore, the Pankhursts do not have well-founded fears of persecution in the Convention sense, and Balboa has no conventional duty to protect them.

3. THE NARROW CONVENTION DEFINITION OF REFUGEE DOES NOT ENCOMPASS DISPLACED PERSONS SUCH AS THE LABORIANS.

A state's obligation to assist refugees under the 1951 Convention does not encompass displaced persons, such as those fleeing armed conflict, economic hardship or natural disasters.<sup>80</sup> The Convention protects only those who fear individualized persecution on the basis of their civil or political status.<sup>81</sup> The Laborians do not anticipate persecution for their individual political or social orientations. Rather, they seek refuge in Balboa simply to avoid the generalized violence of the Laborian civil war.<sup>82</sup> Thus, Convention provisions do not apply to the Laborians, and Balboa has no conventional obligation to assist them.

B. BALBOA'S CUSTOMARY LEGAL OBLIGATION OF *NONREFOULEMENT* DOES NOT EXTEND TO PERSONS OUTSIDE THE SCOPE OF THE 1951 CONVENTION DEFINITION OF REFUGEE.

The customary principle of *nonrefoulement* protects only those asylum seekers who fear persecution on a political basis.<sup>83</sup> Article 33

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<sup>79</sup> Record, paragraph 7.

<sup>80</sup> D. Martin, Large Scale Migrations of Asylum Seekers 76 Am. J. Int'l. L. 598, 607 (1982).

<sup>81</sup> Id.

<sup>82</sup> Record, paragraph 9.

<sup>83</sup> Hailbronner, *supra* note 66, at 857; Grahl-Madsen, *supra* note 68, v.ii at 93.

of the Geneva Convention, which represents the source of the customary rule,<sup>84</sup> provides that a state may not "expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, membership of a particular social group or political opinion."<sup>85</sup> A state's customary obligation, then, does not extend to those who fail to satisfy the conventional definition of refugee. As shown above, none of the asylum seekers qualifies as a Convention refugee. Any assertion that the customary rule of *nonrefoulement* applies to either the Pankhursts or the Laborians constitutes an unjustified expansion of the norm.

To prove an international custom, or expansion thereof, the proponent must demonstrate consistent state practice coupled with *opinio juris*.<sup>86</sup> Consistent state practice means that a practice must be "both extensive and virtually uniform."<sup>87</sup> *Opinio juris* requires states to adhere to the practice "in such a way as to show...that a...legal obligation is involved."<sup>88</sup> The proponent of a custom has the burden of demonstrating its existence.<sup>89</sup> As Freedonia brings this case on behalf of the refugees, Freedonia bears this burden of proof.

1. STATE PRACTICE IS INCONSISTENT IN REGARD TO *NONREFOULEMENT* OF NON-CONVENTION REFUGEES.

The manner in which states deal with asylum seekers who fall

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<sup>84</sup> Goodwin-Gill, *supra* note 77, at 97.

<sup>85</sup> Geneva Convention, *supra* note 5, art. 33(1).

<sup>86</sup> North Sea Continental Shelf (W. Ger. v. Den.; W. Ger. v. Neth.) 1969 I.C.J. 3 at 43.

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Asylum (Colom. v. Peru), 1950 I.C.J. 276-77.

beyond the scope of the 1951 Geneva Convention definition varies considerably.<sup>90</sup> Some states strictly follow the definition. For example, according to the United Kingdom's Immigration Rules a refugee enjoys *nonrefoulement* only if he has a well-founded fear in the Convention sense.<sup>91</sup> The United Kingdom does not consider displaced persons fleeing civil war situations civil wars as having such well-founded fears.<sup>92</sup>

Other states provide *nonrefoulement* on a purely discretionary basis. The United States' Refugee Act of 1980 incorporates the 1951 Convention definition of refugee.<sup>93</sup> Provision for other refugees remains selective.<sup>94</sup> For example, refugees from former Communist regimes enjoy broad rights to asylum in the U.S. while Salvadorans and Haitians have generally been denied and forcibly repatriated to their respective countries.<sup>95</sup> Malaysia, a Moslem state, gives *nonrefoulement* rights to Moslem refugees while it denies these rights to non-Moslems.<sup>96</sup>

A number of states grant *nonrefoulement* to large numbers of displaced persons albeit on a strictly temporary basis. Hong Kong refuses to accept Vietnamese displaced persons permanently, but houses them temporarily in border camps.<sup>97</sup> Not all Vietnamese refugees benefit

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<sup>90</sup> Hailbronner, *supra* note 66, at 874.

<sup>91</sup> R. Plender, *supra* note 78, at 408.

<sup>92</sup> Hailbronner, *supra* note 66, at 883.

<sup>93</sup> 8 U.S.C. § 1182 (1982).

<sup>94</sup> Plender, *supra* note 78, at 410.

<sup>95</sup> Note, INS v. Canas-Segovia: Keeping Politics In and Refugees Out, 8 Conn. J. Int'l. L. 657, 690-691 (1993).

<sup>96</sup> D. Perluss and J. Hartman, Temporary Refuge: Emergence of a Customary Norm 26(3) Va. J. Intl. L. 551, 574 (1986).

<sup>97</sup> R. Mushkat, Hong Kong as a Country of Temporary Refuge: An Interim Analysis, 12 Hong Kong Law Journal 157, 169 (1982).

from *nonrefoulement*, however, even on a temporary basis. Notable exceptions are those refugees who have entered Hong Kong via another state, and Vietnamese boat people.<sup>98</sup> Hong Kong characterizes its actions as humanitarian actions rather than legal obligations.<sup>99</sup> Thailand provides similar temporary refuge for Kampuchean displaced persons, but recently announced that its border will be closed to any future influx of Kampuchians.<sup>100</sup>

Even states which consistently assist non-Convention refugees are becoming reluctant to continue such assistance. Sweden is one of the only states that specifically provides for non-Convention, or "B" status refugees, in its municipal laws.<sup>101</sup> However, Sweden's Immigration Minister recently indicated that "Swedish tolerance and generosity may have reached the breaking point."<sup>102</sup>

The foregoing evidence demonstrates the lack of uniformity of state practice regarding the *nonrefoulement* of non-Convention refugees. Responses range from blanket exclusion of all or certain categories of non-Convention refugees to a qualified acceptance for a temporary period. This hardly shows "extensive and virtually uniform" practice required for the establishment of a customary norm.

2. *OPINIO JURIS* IS ABSENT IN REGARD TO *NONREFOULEMENT* OF NON-CONVENTION REFUGEES.

States do not provide any type of assistance to non-Convention

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<sup>98</sup> *Id.* at 171-72.

<sup>99</sup> D. Greig, The Protection of Refugees and Customary International Law, 8 Australian Yearbook of International Law 108, 125 (1983).

<sup>100</sup> J. Hartman, The Principle and Practice of Temporary Refuge 91, *The New Asylum Seekers: Refugee Law in the 1980's* (D. Martin, ed., 1986).

<sup>101</sup> Hailbronner, *supra* note 66, at 881; Plender, *supra* note 78, at 409.

<sup>102</sup> T. Austin, Sweden's Welcome for Refugees Wears Thin, Reuter Newswire, August 25, 1992.

refugees out of a sense of legal obligation. As previously noted, many states maintain largely discretionary control over the entry and exclusion of refugees and view such assistance as humanitarian expressions and generosity rather than legal obligations.<sup>103</sup> Moreover, states have refused to ratify any international conventions creating binding legal commitments in this area.<sup>104</sup>

The only international treaty which gives rise to any legal obligations dealing specifically with non-Convention refugees is the Organization for African Unity Convention<sup>105</sup> ("OAU Convention"). Many African states assist refugees. However, the OAU Convention merely encourages, and does not require, them to incorporate its terms into domestic practice and legislation.<sup>106</sup> In fact, Nigeria and Ghana do not afford refugee protections consistent with the OAU Convention.<sup>107</sup> Some African nations have even refused to shelter large groups of refugees.<sup>108</sup> The manner in which these states disregard the OAU Convention shows a lack of a sense of legal obligation toward non-Convention refugees even among African nations.

3. EVEN IF BALBOA MUST PROTECT NON-CONVENTION REFUGEES, BALBOA HAS FULFILLED ITS OBLIGATION BY PROVIDING THE ASYLUM SEEKERS WITH TEMPORARY REFUGE.

Although Balboa has no customary obligation to do so, Balboa has foregone *refoulement* of the asylum seekers and currently provides them

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<sup>103</sup> See *supra* notes 94-103 and accompanying text.

<sup>104</sup> S. Aga Khan, Legal Problems Relating to Refugees and Displaced Persons, 149 *Recueil des Cours* 287, 319 (1976).

<sup>105</sup> Organization for African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45.

<sup>106</sup> Plender, *supra* note 78, at 410.

<sup>107</sup> Hailbronner, *supra* note 66, at 877.

<sup>108</sup> *Id.* at 878.

with temporary refuge within Balboa's borders.<sup>109</sup> Balboa will not return the Laborians until the appropriate government entities are functioning and able to receive them.<sup>110</sup> The fact that Balboa has waited a year to return the Laborians demonstrates the caution Balboa exercises in its efforts to secure the Laborians' safety. Additionally, the Pankhursts will not return until Balboa negotiates acceptable terms with Draconia for their repatriation.<sup>111</sup> In so doing, Balboa adheres to any customary rule of *nonrefoulement* if it exists in this case.

**C. BALBOA'S ACTIONS IN THIS MATTER ARE CONSISTENT WITH ITS RIGHTS ACCORDING TO THE GENERAL PRINCIPLE OF STATE SOVEREIGNTY.**

General principles are those which apply within all legal systems.<sup>112</sup> Such principles include sovereignty, equality, self determination, basic human rights and good faith.<sup>113</sup> State sovereignty, or the right of a state to govern its affairs free from external interference, is fundamental to an international legal framework governing relations between states.<sup>114</sup> A necessary incident of sovereignty is the freedom to regulate the entry and exclusion of aliens.<sup>115</sup> Denial of this freedom deprives a nation of its ability to effectively

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<sup>109</sup> Record, paragraph 9.

<sup>110</sup> Id.

<sup>111</sup> Record, paragraph 7.

<sup>112</sup> Virally, *supra* note 28.

<sup>113</sup> Id.

<sup>114</sup> Brownlie, *supra* note 29, at 287; Corfu Channel (U.K. v. Alb.) 1949 I.C.J. 35.

<sup>115</sup> L. Oppenheim, International Law v.1 676 (H. Lauterpacht, ed., 1955); J.L. Brierly, The Law of Nations 276 (1970).

govern its territory and control the allocation of its resources.<sup>116</sup>

In this case, Freedonia proposes that Balboa transfer the asylum seekers in question to Freedonia.<sup>117</sup> However, this would seriously impede Balboa's sovereign abilities to maintain both the economic status quo and its friendly relations with neighboring Draconia. For example, a transfer of the Laborians encourages virtually the entire Laborian population to enter Balboa, hoping for transfer elsewhere. As Freedonia will only accept the current group of refugees,<sup>118</sup> Balboa will have to shoulder any future refugee burdens alone. Balboa has a sovereign right to avoid this type of economic strain.

A transfer of the Pankhursts to Freedonia would jeopardize Balboa's friendly relations with neighboring Draconia. The Pankhursts are illegal aliens by virtue of their failure to comply with Draconian visa requirements. Their transfer could prompt repercussions from Draconia, causing tension between the border states. Balboa must retain control over the movement of individuals so closely connected with important foreign relations interests.

Freedonia intervenes on behalf of the asylum seekers allegedly to protect their humanitarian interests. International law tolerates humanitarian interference with another state's sovereignty only under exceptional circumstances, such as violations of basic human rights.<sup>119</sup> Balboa has not violated the asylum seekers' basic human rights. On the contrary, Balboa has provided them with food and shelter, the basic necessities of life. Thus, Freedonia's intervention in this matter is

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<sup>116</sup> G. Furlanos, Sovereignty and the Ingress of Aliens 57 (1986).

<sup>117</sup> Record, paragraph 14.

<sup>118</sup> Record, paragraph 11.

<sup>119</sup> Barcelona Traction, *supra* note 39, at 32; I. Brownlie, International Law and the Use of Force by States 301 (1963).

not a justifiable vindication of basic human rights and violates Balboa's state sovereignty.

**CONCLUSION**

For the foregoing reasons the Government of Balboa respectfully requests that this Court find, adjudge, and declare,

- 1) That the International Court of Justice does not possess jurisdiction over the subject matter of this case,
- 2) That the application by the Government of Freedonia is inadmissible, and further
- 3) That Balboa's treatment of the asylum seekers fully complies with the demands of applicable international law.

Respectfully submitted,

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Agents for Respondent  
State of Balboa