BENCH MEMORANDUM

1998 Philip C. Jessup International Law Moot Court Competition

The State of Remorra v. The Irenic Republic of Arden

The case concerning the International Criminal Tribunal

*** C O N F I D E N T I A L ***
FOR JUDGES' EYES ONLY

International Law Students Association

INTRODUCTION

The objectives of this Bench Memorandum are twofold: firstly, to provide judges of the Jessup Competition with an overview of law and authority applicable to the case at hand; and secondly, to recommend avenues of exploration for oral rounds judges to pursue in the course of participants' presentations. The format of this Bench Memo shall mirror the claims brought by the Applicant, Remorra, and by the Respondent, Arden. Following the prayers of the parties relating to each issue submitted to the Court shall be an overview of applicable law and authorities, arguments that may be presented by each party, and relevant counterarguments. Judges should keep in mind that this is not meant to be an exhaustive treatise on the issues raised by the facts, but rather an outline of the most relevant arguments and authorities parties may draw upon. It is likely that parties will invoke sources not discussed here, but it is the authors' hope that the information provided will assist judges in evaluating whatever arguments may be brought before them.

I. THE APPLICABILITY OF THE EXTRADITION TREATY: ISSUES OF STATE SUCCESSION AND POLITICAL OFFENSE EXCEPTION

Is the Extradition Treaty still in effect?

Do the provisions of the Peace Treaty settle the issue of state succession to the extradition treaty?

In order to have M. Terraq extradited, Remorra will have to show that the extradition treaty between the former Integra and Arden is applicable in the relations between itself and Arden.

In their peace treaty Remorra and Nylesia agreed that all matters would be resolved in accordance with the 1978 Vienna Convention on Succession of States in Respect of Treaties.

Except for the so-called newly independent states this convention adopts the continuity principle, according to which existing treaties remain in force in case a state is separated into new states. Thus Article 34(1)(a), dealing with 'Succession of States in cases of separation of parts of a State' holds that:

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the Predecessor State continues to exist:
(a) Any treaty in force at the date of the succession of States in respect of the entire territory of the Predecessor State continues in force in respect of each Successor State so formed;

...

Remorra will assert that it inherited the conventional rights and obligations of the former Integra in accordance with the Convention.

The Vienna Convention on the Law of Treaties says that generally a treaty is not binding on third parties without their consent (Art. 34), but Remorra can argue that the peace treaty creates no new obligations for Arden in regard to the pre-existing extradition treaty. It is an issue of state succession governed by customary international law as reflected in the Vienna Convention. It can use the recent ICJ decision in the Gabcikovo Case (Hungary v. Slovakia) as evidence that art. 34 of the Vienna Convention reflects CIL. Remorra should therefore argue that the provisions reflect customary international law. This, however, appears to be the weaker argument, since it is generally recognized that the 1978 Convention to a large extent embodies progressive development, which in turn explains the reluctance of states to accede to it.

Arden should respond that the peace treaty Remorra has signed with Nylesia is applicable only in their relations, and cannot be extended to the relations between Arden and Remorra. There is no customary international law on state succession to treaties; it is a controversial and unsettled issue, witnessed by the non-ratification of the Vienna Convention. And it can argue that changing a party to a treaty does change its obligations. The Gabcikovo case did not decide that art. 34 is CIL; only that art. 12 is, a provision not applicable to this case. The Court left open the issue of art. 34.

Both sides should supply evidence to support their contentions, including current number of state parties to the Vienna Convention

Assuming the Vienna Convention reflects customary international law, or can apply to Arden, what provisions of the Vienna Convention on State Succession govern this situation?

Arden should argue that art. 16 applies, the 'clean state' rule applicable to the newly independent states, according to which a newly created state is not obliged to continue to be bound by its predecessor's treaties and, on the basis of reciprocity the treaty is therefore no longer in force. Art. 24 provides that a bilateral treaty only remains in force upon agreement between the successor state and the third state (Arden) which in this case has not agreed to the succession.

Remorra will argue that it is not a situation of decolonization governed by arts. 16 and 24, but rather art. 34 governs the separation of parts of the territory into new states, i.e. the disintegration of a former state. This provision keeps in force all treaties applicable to the entire former territory. Reference could also be made to Article 18 of the Vienna Convention on the Law of Treaties, to which both states are parties and which holds that a state may not defeat the object and purpose of a treaty which it has signed but which has not yet entered into force. Since Arden has signed the 1978 Convention but has not deposited an instrument of ratification, Remorra could argue that Arden is nonetheless bound by its provisions.

In addition, Remorra could argue that by not protesting against the Peace Treaty, Arden has acquiesced in the application of the 1978 Convention between itself and Remorra.

Both sides should know the provisions of the Vienna Convention and be able to argue the facts that support their contentions on the relevant provisions.

Does the extradition treaty require Arden to grant Remorra's request for extradition?

Arden will have to argue that the political offense exception allows it to refuse extradition in this case.

The key question is whether there is any limit to the discretion of the requested state in determining whether an offense is political or not. There are no international cases on this issue; all court decisions are domestic, as are the various tests.

Arden will argue that all evidence indicates that characterization of a political offense is solely a matter for the requested state.
Remorra will argue that as the term 'political offense' is a term in a treaty it must be interpreted according to the canons of interpretation contained in the Vienna Convention on the Law of Treaties: in good faith, in context, in light of the object and purpose of the treaty. While some discretion is permitted, it would be an abuse of that discretion to interpret the terms to cover the violations of humanitarian law and human rights that occurred in this case

Assuming there is international law on the question, were the offenses here political in nature?

Arden should invoke the political offense doctrine, by arguing that the offenses committed by Malu Terraq were politically motivated and that therefore, even if the Court would rule the extradition treaty in force, extradition is excluded under the terms of that same treaty. Indeed, Malu Terraq's actions committed as the leader of the NPLA, which aimed at the overthrow of the existing government, could be regarded as 'pure' political offenses which "are virtually always excluded [from extradition] expressly or by common understanding."

Remorra would have to respond that the offenses were not of a political nature, i.e. by referring to the Report of the Panel of Experts, which concluded that Terraq was to be considered hostis humani generis, an enemy of mankind. International crimes require extradition or prosecution and can never be considered political offenses. Remorra may cite to the Genocide Convention, the Torture Conventions, and the Geneva Conventions as evidence that international crimes are excluded from characterization as political offenses. Remorra may also argue that under any of the commonly used tests for political offense, the acts committed here would be excluded.

Arden will argue that extradition is not being sought for any of the crimes designated as international crimes, but rather for murder (not genocide), treason and sedition. The last two are quintessential political offenses, indeed the very reason for the inclusion of the exception in extradition treaties. Even if international crimes were committed, Remorra would not be entitled to try the accused for a different offense than those for which extradition was requested.

Remorra should, moreover, elaborate on the contradictory nature of this argument: If Arden does not want to extradite a political offender to Remorra, how could it then justify extradition to the tribunal? Arguably this amounts to an abuse of rights.

Arden could also argue that it has a right under customary international law to refuse extradition to countries, which have capital punishment. In support of this contention Arden could refer to Article 4(d) of the Model Treaty on Extradition, according to which extradition may be withheld:

If the offense for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out.

Is there a human right exception overriding the treaty?

Arden will argue that the executions (facts para. 25) following imposition of a death sentence without appeal violates fundamental human rights to the extent that Arden cannot extradite without violating a norm that is jus cogens. This is evident in the Soering decision of the European Court of Human Rights and provisions of all human rights treaties.

JURISDICTION OF THE INTERNATIONAL TRIBUNAL

The ICTFI was established by Security Council Resolution 1024, a decision taken under Chapter VII of the United Nations Charter. According to Resolution 1024 "the jurisdiction of this tribunal shall be

complementary to that of national criminal courts, and shall be interpreted in a manner not inconsistent with pre-existing obligations under treaties and customary international law."

Remorra claims that "Arden has no right to deliver a Remorran national to the custody of an international tribunal with no basis in the law, when he is accused of crimes in Remorra." Indeed, according to the territorial principle there is no doubt that Remorra can claim criminal jurisdiction over Malu Terraq.

In the first place Remorra will claim that Arden is obliged to extradite the accused under the extradition treaty. Alternatively, Remorra should contend that even if the Court decided that this treaty is no longer in force, Arden has no right to surrender Terraq to the ICTFI.

Thereto Remorra will have to demonstrate that the Security Council's decision to establish the tribunal was ultra vires.** As such, Remorra would no longer be obliged to "accept and carry out" the decision of the Council as mandated by Article 25 of the Charter.

Remorra should also argue that even if the establishment of the ICTFI is to be considered intra vireos, the terms of Security Council resolution 1024 clearly indicate that it does not possess jurisdictional primacy over national criminal courts. This argument should include reference to the phrase that the tribunal's jurisdiction "will be complementary to that of national criminal courts," a phrase, which interpreted according to its natural and ordinary meaning, implies that the latter have primacy.

Remorra should furthermore point out that Article 9(2) of the Statute of the ICTY explicitly holds that "the International Tribunal shall have primacy over national courts." Since the statute of the ICTY was adopted prior to resolution 1024, Remorra should argue that it must be inferred that the Council deliberately excluded such a primacy provision in the charter of the ICTFI, and that the jurisdiction of national courts must be deemed to prevail.

Additionally Remorra could argue that the provision of resolution 1024 that the jurisdiction of the ICTFI "shall be interpreted in a manner not inconsistent with pre-existing obligations under treaties" means that the Council did not want to interfere with existing extradition instruments. Any counter argument of Arden that the request for surrender by the tribunal prevails over the request under the extradition treaty by virtue of Article 103 of the Charter would therefore be inapplicable.

Alternatively, Arden should argue that as a member state of the United Nations it is obliged to comply with the Tribunal's request to surrender Malu Terraq. Resolution 1024 was taken by the Council under Chapter VII of the United Nations Charter, and as such is legally binding under Article 25 of the Charter. This means that Arden is obliged to comply with the tribunal's request to surrender the accused. Reference might be made to the Secretary-General's Report on the establishment of the ICTFY, according to which "the establishment of the International Tribunal on the basis of a Chapter VII decision creates a binding obligation on all States to take whatever steps are required to implement the decision."

Moreover, Arden should refer to the jurisprudence of the ICJ, according to which a resolution taken by the Council benefits from a presumption of validity. Arden should therefore argue that Remorra is not in a position to unilaterally claim that the establishment of the ICTFI is invalid.

Arden might also contend that although the United Nations constituent conference decided that "if an interpretation made by any organ of the Organization or by a committee of jurists is not generally acceptable it will be without binding force", the international community's general acceptance of and cooperation with the international criminal tribunals for the former Yugoslavia and Rwanda clearly indicate

that the decision contained in resolution 1024 is generally acceptable. Once again this implies that Remorra cannot by itself denounce the Council's decision.

Furthermore, Arden should submit that even if the Court were to find that the extradition treaty is applicable, the conflicting obligation to surrender M. Terraq to the tribunal prevails by virtue of Article 103 of the United Nations Charter. The Court has recently confirmed the primacy of the Charter in such cases.

STATE RESPONSIBILITY AND COMPENSATION

Remorra claims compensatory damages from Arden for not extraditing M. Terraq. According to the I.L.C. draft articles on state responsibility: Every internationally wrongful act of a State entails the international responsibility of that State.

Moreover, according to draft article three:
There is an internationally wrongful act of a State when:
(a) Conduct consisting of an action or omission is attributable to the State under international law; and
(b) That conduct constitutes a breach of an international obligation of the State.

Remorra's claim for compensation therefore depends on its demonstrating that the extradition treaty is in force between itself and Arden; that under that treaty regime Arden is obliged to extradite M. Terraq; and that the obligation to extradite to Remorra prevails over the invalid-request of the tribunal to surrender the accused. If the Court upholds these propositions, Remorra could validly claim that the non-extradition of Terraq to Remorra contravenes Arden's obligation under the extradition treaty and therefore constitutes an internationally wrongful act towards Remorra for which compensation is due.

Arden has alternatively submitted that the extradition treaty is not in force; and that even if it were in force its obligation to extradite Terraq to Remorra is superseded by its obligation to surrender to the ICTFI by virtue of Articles 25 and 103 of the United Nations Charter. Arden therefore can not be held to have committed an internationally wrongful act, and can therefore not be held responsible.

SUBJECT-MATTER JURISDICTION

(INTERNATIONAL HUMANITARIAN LAW)

An argument Remorra might raise concerning the jurisdiction of the ICTFI is that the crimes alleged against Terraq do not fall within its subject-matter jurisdiction. In essence, this is a question of the state of international humanitarian Law, hence, a discussion of the antecedents to human rights law and the development of international humanitarian law is required.

The parties may rely upon a number of key sources for this:

- The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention);
- The 1949 Geneva Conventions;

- The decision of the U.S. Court of Appeals for the Second Circuit in Kadic v. Karadzic;
- Reports of the trial chamber and appeals chamber of the International Criminal Tribunal for the former Yugoslavia in the case of the Prosecutor v. Dusko Tadic, Case No. IT-94-1-T.

Judges may find it helpful to familiarize themselves with these Conventions and decisions. The parties on the other hand, should be thoroughly knowledgeable about them, but they must not solely rely on these decisions. Instead, they must be able to identify which arguments that are made in those cases are related to the dispute between Remorra and Arden, how they may be distinguished from the facts, parties and procedural posture, and to use the sources cited in them as points of authority in support of their arguments. Both sides should also note that the jurisdictional dispute before the ICTFY was never brought before the ICJ, and that these decisions have no binding effect.

Approaches taken to the issues involving international humanitarian law vary depending on the judge who has written the opinion. Also, while a U.S. judge wrote the court of appeals decision and another U.S. judge presided over the trial chamber and most likely wrote that opinion as well, an Italian judge wrote the majority opinion in the appellate chamber and judges from other judicial systems in the world wrote separate opinions that arrive at the same result but with different jurisprudential approaches. It is with the international sources and the different approaches taken by these various judges of which both sides should be knowledgeable and on which the judges should score them.

Unlike in the case before the ICTFY, the compromis between Remorra and Arden does not have several articles delimiting the scope of the crimes within its jurisdiction. The ICTFY statute has numerous provisions, three of which were central to the decision in Tadic: Article 2 refers to 'grave breaches' of the Geneva Conventions, Article 3 to 'violations of the laws or customs of war', and Article 5 to 'crimes against humanity'. In the case of the ICTFI, the Panel of Experts reported substantial evidence of torture, systematic rape, summary executions and 'ethnic cleansing' carried out by the Nylesian separatists associated with the NPA, and catalogued several instances of forces under Terraq's command seizing weapons and food from Remorran houses in the Telfin area. It concluded, that these acts were crimes against peace and crimes against humanity. The panel also reported that Terraq had committed a number of acts in violation of international humanitarian law, including the mistreatment of prisoners detained in Telfin, ordering that ethnic Remorrans be set afloat on boats to drift at sea without food, water, or fuel, killing the mayor of Telfin, and ordering the torture of two ethnic Remorran prisoners at the Telfin transfer station.
The compromis shows that the panel recommended to the Security Council that the ICTFI be commissioned to issue and to conduct trials of the perpetrators of these crimes and other violations of law occurring in the territory of the former Integra since the outbreak of hostilities in 1995, and that the Security Council provided in Resolution 1024 that 'the jurisdiction of this tribunal shall be complementary to that of national criminal courts, and shall be interpreted in a manner not inconsistent with pre-existing obligations under treaties and customary international law'.

The jurisdiction of the ICTFI therefor arguably has, as does the ICTFY, both temporal and territorial jurisdiction: the crimes must have taken place since the outbreak of hostilities in 1995, and they must have taken place in the territory of the former Integra. However, unlike the ICTFY, the ICTFI's jurisdiction arguably encompasses all violations of international humanitarian law, not just those specified by the articles in the case of ICTFY.

It can be argued that since the panel recommended the establishment of the tribunal for the purpose of trying most accused of crimes against peace and crimes against humanity, there is no specific provision for

trying those accused of war crimes or grave breaches of the Geneva Conventions, as in the case before the ICTFY. However, the language of the Security Council in establishing the ICTFI, and that of the panel's report, also can be construed broadly to encompass all violations of international humanitarian law.

As the defense argued in the Tadic case, Remorra might argue that for the court to have subject matter jurisdiction, there must have been an international armed conflict. It will try to show that the conflict was purely internal. With regard to the conflict in the former Yugoslavia, the conflict became international by involvement of the Croatian army in Bosnia-Herzegovina and that of the Yugoslav National Army in hostilities in Croatia and Bosnia. Here, by contrast, the conflict ended before the former Integra was split into two independent States; the conflict in the former Yugoslavia covered by the temporal limitation of the court's jurisdiction, arose after several of the former Yugoslavia's constituent entities were recognized as independent States. Remorra may therefor rely upon the Appeal's Chamber's statement, in paragraph 72 of its decision, that:

> [t]o the extent that the conflicts had been limited to clashes between Bosnia Government forces and Bosnia Serb rebel forces in Bosnia-Herzegovina, as well as between the Croatian Government and Croatian Serb rebel forces in Krajina (Croatia), they had been internal (unless direct involvement of the Federal Republic of Yugoslavia (Serbia-Montenegro) could be proven).

Nevertheless, Arden should argue that international humanitarian law applies to conduct of both internal and international armed conflicts; and that in any event, using a teleological interpretation of the Court's subject matter jurisdiction, it clearly was the intent of the Security Council to take measures to maintain peace and security in the former Integra without regard to whether the conflict was internal or international.

Factors that may be used in determining whether a conflict is internal or of international concern are the nature and gravity of the acts of hostility, whether the acts harm fundamental interests of the whole international community, and state practice with regard to whether they consider such acts internal or of international concern.

Parties should be aware that, unlike with regard to the information of the ICTFI, Article 2 of the Statute of the ICTFY referred to 'grave breaches' of the Geneva Conventions, and that with regard to such breaches, the system set up by the Conventions establishes an enumeration of offenses that constitute 'grave breaches', as well as mandatory enforcement mechanism imposing a duty as well as a right of all the Contracting States to the Conventions to search for and try or extradite persons allegedly responsible for such breaches. For such breaches, the conflict must be international. This requirement was necessary because States parties to the Conventions did not want their sovereignty infringed by other States where the conflict was purely internal. Remorra may rely upon this in support of its argument that it should be allowed to try Terraq because the crimes alleged against him took place solely within the territory of the former Integra.

Alternatively, Remorra may argue that there was no armed conflict in the area where the crimes of which Terraq was accused were allegedly committed. However, this would have no merit because the accusations against Terraq are of crimes committed in the province of Telfin and that is where particularly bitter fighting occurred between Remorrans and Nylesians. The Geneva Conventions contain language intimating that they may apply beyond the cessation of fighting. Some of the provisions appear to apply to the entire territory of the parties to a conflict, not just to the area in which the conflict actually takes place. Geneva Convention IV protects civilians as long as they are located anywhere in the territory of the parties to the conflict. Article 3(b) of Protocol 1 to the Geneva Conventions contains similar language. Common Article 3 of the Geneva Conventions provides that the beneficiaries of these conventions are those taking no part in

the hostilities. In sum, the language of the Geneva Conventions and its Protocols suggest that the 'nexus required is only a relationship between the conflict and the deprivation of liberty, not that the deprivation occurred in the midst of battle'. Tadic Appeals Chamber decision, at para. 69. As such, the Appeals Chamber concluded that:

> International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of the party, whether or not actual combat takes place there. Id. para. 70.

In addition to making these arguments, the parties ought to demonstrate knowledge and understanding of the customary rules of international humanitarian law governing internal armed conflicts. Traditionally, the response of the international community to armed violence depended on whether it was internal or international. Conflicts between sovereign States were considered belligerancy, and internal conflicts were called insurgency. Belligerancy was regulated by a whole body if international legal rules governing both the conduct of hostilities and the protection of civilians not involved in those hostilities. Insurgency, on the other hand, was preferred by States to be left to the purview of national criminal law and to exclude intrusion by other States. But this distinction has become blurred since the 1930s, and hence a state-sovereignty-oriented approach has given way to a human-being-oriented approach.

International rules governing internal conflicts have emerged both by custom and treaty law. Some of the treaty rules have become custom, such as common Article 3 of the 1949 Geneva Conventions. The first rules to evolve were those aimed at protecting civilian populations from hostilities. The Appeals Chamber in the Tadic case points to the specific examples of behavior of belligerent States, Governments and insurgents and other factors that have been 'instrumental in bringing about the formation of customary rules at issue'. It relies on actions of the International Committee of the Red Cross, U.N. General Assembly Protocol II of 1977, and some military manuals. Participants ought to demonstrate knowledge of some of these sources in support of their arguments.

In sum, however, as the Appeals Chamber concluded in the Tadic case, internal armed conflict is not regulated by general international law in all its aspects. There are two limitations that it noted in particular:

> (i) Only a number of rules and principles governing international armed conflicts have gradually been extended to apply to internal conflicts; and (ii) this extension has not taken place in the form of a full and mechanical transplant of those rules to internal conflicts; rather, the general essence of those rules, and not the detailed regulation they may contain, has become applicable to internal conflicts.
> Id. para 126

Both sides should also be able to point to specific provisions of the Geneva Conventions and customary international law regarding these issues. Specifically, the Geneva Conventions criminalize, among other things, willful killing, torture, extensive destruction and appropriation of property not justified by military necessary and carried out unlawfully and wantonly, and unlawful confinement of civilians, all of which can be invoked against Terraq.

Both sides may also argue the applicability of these rules to individuals. Until the Nuremberg trials, previous examples of state responsibility for violations of international humanitarian law were concerned

with protecting aliens. The Nuremberg trials were the first example of punishing a State for its mistreatment of its own citizens. Whereas before, the emphasize was on State responsibility, here individuals became the objects of international law both as victims and as victimizers. As the Appeals Chamber in Tadic pointed out, the Nuremberg Tribunal relied on a number of factors for its conclusion that individuals incur responsibility in internal armed conflict: the clear and unequivocal recognition of the rules of warfare in international law and State practice, such as States' trying individuals as criminals for serious breaches of customary rules and principles on internal conflicts, provisions in military manuals punishing individuals for breaches of common Article 3 of the Geneva Conventions, national legislation designed to implement the Geneva Conventions, and unanimous resolutions of the UN Security Council. With regard to crimes against humanity, they were first recognized in the trials of war criminals following World War II. Article 6, paragraph 2(c) of the Nuremberg Charter defines these offenses, and a 1948 General Assembly Resolution affirmed these principles. The jurisdiction of the Tribunal required a nexus between crimes against humanity and either crimes against peace or war crimes, and this requirement was carried over to the 1948 General Assembly resolution. However, as the appeals chamber in Tadic says, "there is no logical or legal basis for this requirement and it has been abandoned in subsequent State practice with respect to crimes against humanity." Id. at para. 140. The Genocide Convention, for example, prohibits particular types of crimes regardless of whether there is a nexus between the crime and armed conflict. "It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict." at Id. para. 141.

STATUS OF BANK SECRECY LAWS UNDER INTERNATIONAL LAW

The panel reported that there was substantial reason to believe that Terraq had systematically diverted to his own use a large amount in cash and other liquid assets that had passed through his hands in connection with procurement of munitions and supplies to support Nylesian separatists.
Remorra demands that an accounting be provided of the funds in the First Arden National Bank to which Malu Terraq is record owner.

Arden law does not permit the banks to deprive the record owners of those assets of their property rights, or to share with anyone, including their own authorities, information concerning their disposition.

Does international law require the abrogation of Arden's Bank secrecy laws?

Financial confidentiality is well protected under most national laws and common laws, which makes it very difficult to get hold of information of record owners. Although no international uniformity concerning the rules of bank privacy or disclosure exists, various state practice illustrates that bank secrecy laws are not a bar to gathering information needed for proceedings concerning criminal activities. Examples can be found in Switzerland regarding bank accounts of President Marcos of the Philippines and Ceaucescu of Romania and the investigations into stolen Nazi gold and on the Caymans Islands. National courts have also ordered the relaxation of bank secrecy laws or other confidentiality requirements in similar situations. Examples are: District Court of Kiel Judgment Concerning United States Grand Jury subpoenas of bank records in the Krupp Case and Caymans Court of Appeal in US v. Carver (no 5) 1982.

As crimes become more international, treaties and resolutions for international judicial assistance have been signed and exceptions are made for criminal cooperation. A few examples are:

- The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which is, however, limited to drugs traffic (Vienna U.N. Drug Convention, 100 member countries).
- 1990, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which is limited to all serious crimes.

- Statutes of the International Criminal Tribunal for the former Yugoslavia, which makes exceptions for criminal cooperation and forfeiture.
- In 1992, the Organization of American States (OAS) unanimously approved a set of nineteen articles directed to the restraint of money laundering and recommended their enactment.
- In 1990, The U.N. General Assembly adopted a resolution on a Model Treaty on Mutual Assistance in Criminal Matters.

Judges should notice that the subject matter of most of these treaties or resolutions is highly limited. Furthermore, neither Remorra nor Arden is a party to any of those treaties or treaties regarding the recognition of foreign judgments and therefore their respective obligations must be found in customary international law.

The main question teams have to answer is: Are these treaties and practice of individual nations convincing evidence that access to financial records and accounting of suspected criminal proceeds is a rule of customary international law taking precedence over any domestic secrecy tradition or legislation?

Both sides should use the stated Conventions in their arguments and refer to national court decisions on this issue.