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2006-2007 Niagara International Moot Court Problem

[Author's note: The "facts" described below are purely fictional.]

Canada v. The United States Case Concerning *The Maple Princess*

1. Mr. Stephen Sharper is a citizen and resident of Canada and a long-time Member of Canada's Parliament. In April 2003, Sharper purchased *The Maple Princess*, a custom-built 85-foot luxury sail catamaran for US\$5.8 million from Lunenburg Foundry & Engineering, Nova Scotia, Canada. Registered as a Canadian flag ship, *The Maple Princess* has a maximum speed of 20 knots, and is equipped with powerful twin diesel inboard engines to supplement sail power when necessary. Sharper sometimes entertained Canadian politicians and foreign dignitaries on the yacht, but he used it principally for family vacations.
2. On March 10, 2006, following his party's victory in the federal general election, Stephen Sharper was sworn in as Prime Minister of Canada. A few weeks later, Sharper agreed to lease *The Maple Princess* to his half-brother, Mr. Flan Tomigan, also a citizen and resident of Canada, for \$500 a month for two months – June and July 2006. The written lease agreement indicates that Tomigan and his wife intended to sail the vessel from its home port in Sydney, Nova Scotia, to Ireland and back for their summer vacation. Prior to turning *The Maple Princess* over to Tomigan, Sharper replaced the yacht's original spinnaker, which had featured the slogan "Canada: Proud to Call it Home," with a new spinnaker featuring a giant red maple leaf emblazoned with the words "Thinking new boat? Think Canadian!"
3. Mr. Max Aziz, a citizen and resident of Canada, is a close friend of Flan Tomigan. The two first met in 1992 as classmates at Queen's School of Business in Kingston, Ontario. Since 1994, Aziz has run an extremely profitable import-export business based in Galway, Ireland, with major customers across Europe and the Middle East. Tomigan and Aziz were avid yachtsman, and spent several sailing vacations together during the 1990s. In April 2006, Tomigan invited Aziz and his wife, Estelle, to join the Tomigans in Galway in July and sail back with them to Canada aboard *The Maple Princess*.

4. Based on analyses of banking records from Cypriot and Swiss financial institutions, the United States Central Intelligence Agency long suspected that Max Aziz, also known as Mohamed Aziz, was the primary financial figure in the Al-Qaeda terrorist organization, and that Aziz was using his import-export business to funnel millions of dollars to various Al-Qaeda cells throughout the world.
5. During the first two weeks of June 2006, the U.S. National Security Agency (NSA) intercepted and deciphered a series of encrypted electronic mail messages from Aziz which confirmed his important role in Al-Qaeda and indicated that he was planning on traveling with millions of dollars in Swiss Bearer Bonds from Galway to Nova Scotia on July 2, 2006, aboard *The Maple Princess*.
6. On June 21, 2006, the U.S. President issued a Top Secret Presidential Decision Directive (PDD 2006-08), which has subsequently been declassified in relevant part. PDD 2006-08 authorized a "targeted killing of Osama bin Laden's chief financier, Mohamed Aziz, who is expected to be found aboard a pleasure yacht in the high seas off the coast of Canada on or around July 15, 2006." PDD 2006-08 observed that "the elimination of al Qaeda's financial mastermind, Mohamed Aziz, will constitute a severe blow to the organization, which will not be able to launch operations against the United States without the financial lifeblood provided by Aziz." At no time was the Government of Canada informed about the Directive or preparations for its execution.
7. A U.S. Navy PC-1 Cyclone Class Special Ops vessel was dispatched to clandestinely follow *The Maple Princess* as it sailed from Ireland to Canada. At 0200 Greenwich Mean Time on July 16, 2006, *The Maple Princess* was located 260 nautical miles east of the coast of Nova Scotia, cruising due west on autopilot at a speed of 18 knots. At that time, a team of six U.S. Navy Seals surreptitiously boarded *The Maple Princess*. The Seals discovered four passengers asleep in the vessel's berths. Using Taser M-18 stun guns, the Navy Seals rendered the four passengers unconscious. They identified Mohamed Aziz, shot him in the forehead, and threw his body overboard.
8. During the operation, the Seals discovered two large suitcases beneath Aziz's bunk: one containing millions of dollars in Swiss Bearer Bonds, and one filled with hundreds of ziplock bags containing a white powdery substance that appeared to be heroin. The Seals left *The Maple Princess* on autopilot and disembarked, taking the Bearer Bonds but leaving the contents of the second suitcase, as well as the three unconscious passengers, behind. The U.S. Navy promptly notified U.S. Coast Guard Portsmouth Harbor Station of the location of *The Maple Princess* and the Seals' suspicions concerning the presence of a large quantity of heroin on board the vessel.
9. The U.S. Coast Guard immediately deployed an MH-68 "Shark" helicopter to the location of *The Maple Princess*, which was still well over 200 nautical miles from the Canadian coast. Without notifying the Canadian government, two of the "Shark" crew members boarded *The Maple Princess*, and confirmed the presence of approximately \$20 million worth of pure

Afghan heroin. They took the vessel and its three remaining passengers into custody, sailing it into Portsmouth Harbor Station.

10. When Tomigan awoke a few hours later and produced identification and documentation proving that he was the half-brother of the Prime Minister of Canada, the Coast Guard immediately released the three detained passengers, but retained *The Maple Princess* and the suitcase containing heroin. Thereafter, the United States instituted forfeiture proceedings under 21 U.S.C. Section 881, 49 U.S.C. Section 784, and 19 U.S.C. Section 1615.
11. On August 17, 2006, lawyers for the government of Canada made a special appearance before the U.S. District Court, District of New Hampshire, in the forfeiture proceedings titled *United States v. The Maple Princess*. They argued that the case should be dismissed and the vessel should be returned to Sharper for three reasons: (1) since the vessel was not heading towards the territory of the United States, the United States' exercise of jurisdiction was "exorbitant under international law"; (2) as the personal property of the Prime Minister of a sovereign nation, forfeiture of *The Maple Princess* was precluded by the doctrine of "Head of State immunity"; and (3) the boarding, search and seizure of *The Maple Princess* violated Article 6 of the 1958 Convention on the High Seas, in that the U.S. did not seek nor obtain consent of Canada, as flag State.
12. In a *per curiam* opinion dated September 4, 2006, the District Court rejected Canada's arguments, finding that (a) under the circumstances, the United States could properly exercise universal jurisdiction over *The Maple Princess* under customary international law; (b) as head of government, rather than head of state, Sharper does not enjoy the benefits of head of state immunity; (c) in any event, head of state immunity does not apply to commercial acts and property unrelated to the official functions of the head of state; and (d) Article 6 of the High Seas Convention did not protect *The Maple Princess*, which was transporting a major terrorist and carrying a cargo of heroin and was therefore analogous to a pirate vessel. The U.S. Court of Appeals, First Circuit, affirmed in a one-sentence opinion.
13. In a separate case, styled *Aziz v. Rumsfeld*, Estelle Aziz sued the United States under the U.S. Alien Tort Claims Act, 28 U.S.C. Section 1350, for the killing of her husband. In a *per curiam* opinion, dated September 16, 2006, the U.S. District Court for the District of Columbia dismissed the case, citing the U.S. Supreme Court's decision in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) . The U.S. Court of Appeals for the District of Columbia Circuit affirmed in a one-sentence opinion.
14. The government of Canada and Mrs. Aziz each petitioned the U.S. Supreme Court for writs of *certiorari*. On October 3, 2006, the Supreme Court denied each petition. On the morning of October 5, 2006, Prime Minister Sharper delivered a public address concerning *The Maple Princess*, stating:

"We have given the United States every opportunity to make amends for its violation of Canada's sovereign rights, either at law or at the negotiating table. The U.S. courts have denied Canada and Mrs. Aziz relief, and the United States has refused to engage in diplomacy to resolve the issue. Effective immediately, I

am ordering the closure of the Canadian entrance to the Peace Bridge, one of the busiest border crossings between Canada and the United States. The entrance will not be re-opened until the United States agrees to submit to the jurisdiction of the International Court of Justice for the resolution of Canada's claims concerning *The Maple Princess* and the unlawful killing of Canadian businessman, Max Aziz."

15. A few hours later, the United States agreed to submit the matters to the ICJ, and Prime Minister Sharper in turn rescinded his order to close the Peace Bridge. Pursuant to Articles 40(1) and 36(1) of the Statute of the ICJ, the two States agreed to submit the dispute to a Chamber of the ICJ composed of three judges. By Special Agreement, the States submitted four questions to the ICJ:
 - a. Did the United States violate international law when it conducted the "targeted killing" of Canadian national Max Aziz, a.k.a. Mohamed Aziz?
 - b. Did the United States violate the Law of the Sea when it boarded, searched, and seized *The Maple Princess* without first obtaining the approval of Canada?
 - c. Was the United States' exercise of "universal jurisdiction" over *The Maple Princess* lawful under international law?
 - d. Should the doctrine of "head of state immunity" prevent U.S. judicial forfeiture proceedings against *The Maple Princess*?

16. In addition, the two Parties have stipulated that:
 - a. Canada shall be designated as Applicant and the United States shall be designated as the Respondent in these proceedings;
 - b. the facts set forth above are to be regarded as true;
 - c. the relevant treaties to which the United States and Canada are party, and applicable rules of customary international law, shall govern the case.
 - d. no arguments are to be made addressing the legality of the closure of the Peace Bridge, the propriety of the ICJ's jurisdiction, or issues of standing, ripeness, exhaustion, or the admissibility of the case; and
 - e. the United States and Canada each agrees to immediately bring its actions and positions into conformity with the legal conclusions of the ICJ in this case.