

2006-07
NIAGARA INTERNATIONAL MOOT COURT COMPETITION

A Dispute Arising Under
The Statute of the International Court of Justice
March 2007

THE GOVERNMENT OF
CANADA
(Applicant)

v.

THE GOVERNMENT OF
THE UNITED STATES OF AMERICA
(Respondent)

MEMORIAL OF THE RESPONDENT
TEAM # 2007-19R

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STATEMENT OF FACTS

Aziz, also known as Mohamed Aziz, has long been suspected of being the primary financial figure of Al-Qaeda. The United States Central Intelligence Agency (CIA) analyzed banking records from Cypriot and Swiss financial institutions which suggested that Aziz was using his import-export business located in Galway Ireland, to funnel millions of dollars to various Al-Qaeda cells throughout the world.

In June of 2006, the U.S. National Security Agency (NSA) intercepted and deciphered a series of encrypted electronic mail messages from Aziz, a Canadian citizen and resident, that confirmed his important role in the Al-Qaeda terrorist organization by revealing that he was planning on traveling with millions of dollars in Swiss Bearer Bonds from Galway Ireland to Nova Scotia on July 2, 2006 aboard a Canadian flag ship *The Maple Princess*. The NSA immediately notified the CIA of the planned travel and the U.S. President was promptly notified.

On June 21, 2006, the President issued a Top Secret Presidential Directive (PDD 2006-08), which authorized the targeted killings of Osama bin Laden's chief financier, Aziz, who was expected to be found aboard a pleasure yacht in the high seas off the coast of Canada on or around July 15, 2006. This Presidential Directive stated that "the elimination of Al-Qaeda's financial mastermind, 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."

On July 16, 2006, the U.S. Navy was dispatched to follow *The Maple Princess* which was boarded by a team of six U.S. Navy SEALs at 02:00 Greenwich time while located 260 nautical miles east of the coast of Nova Scotia. The Navy SEALs promptly tranquilized 4 passengers on board the yacht as ordered, identified Aziz and euthanized him.

In the course of the operation, the Navy Seals discovered two large suitcases beneath Aziz's bunk. One containing millions of dollars in Swiss Bearer Bonds and the other filled with hundreds of zip lock bags containing a white powdery substance that appeared to be heroin. The Navy Seals left taking the Swiss Bearer Bonds and promptly notified the U.S. Coast guard of the suspected presence of heroin aboard *The Maple Princess*. The U.S. Coast guard immediately deployed an MH-68 Shark helicopter and two of its crew members confirmed the presence of approximately \$20 million worth of Afghan heroin. The Coast Guard immediately seized the yacht and took its three remaining passengers into Portsmouth Harbor Station.

At the station, Flan Tomigan, one of the passengers and close friend of Aziz identified himself as the half-brother of the Prime Minister of Canada, Stephen Harper, explaining that he had leased the yacht for \$500 a month from his half-brother to sail round trip from Sydney Nova Scotia to Galway Ireland during the months of June and July 2006. The Coast guard released Flan Tomigan, his wife, and Aziz's wife Estelle. The United States then instituted forfeiture proceedings of the yacht pursuant to 21 U.S.C. Section 881.

On August 17, 2006, lawyers for the Government of Canada made a special appearance before the U.S. District Court, District of New Hampshire arguing the dismissal of the forfeiture proceedings of *The Maple Princess*. The District Court rejected all arguments and the U.S. Court of Appeals, First Circuit affirmed. In a separate case, Estelle Aziz sued the United States under the U.S. Alien Tort Claims Act pursuant to 21 U.S. 1350, for the killing of her husband. However on September 16, 2006, the U.S. District Court of the District of Columbia dismissed the case which the U.S. Court of Appeals for the District of Columbia also affirmed in a one-sentence opinion. Consequently, the Government of Canada and Mrs. Aziz each petitioned the U.S. Supreme Court for *writs of certiorari* which were denied on October 3, 2006. Both countries have agreed to submit the dispute to the International Court of Justice.

QUESTIONS PRESENTED

The Applicant and Respondent refer four questions to the panel:

1. Whether the United States violated the Law of the Sea when it boarded, searched, and seized *The Maple Princess*;
2. Whether the United States violated international law when it conducted the targeted killings of Mr. Max Aziz on the night of July 16, 2006;
3. Whether the United States' exercise of universal jurisdiction over *The Maple Princess* was lawful under international law; and
4. Whether the doctrine of head of state immunity prevents the U.S. judicial forfeiture proceedings against *The Maple Princess*.

JURISDICTIONAL STATEMENT

The parties, through special agreement, submit this dispute to the International Court of Justice for a binding declaratory judgment pursuant to Articles 36(1) and 40(1) of the *Statute of the International Court of Justice*. Article 36(1) and 40(1) confer upon the Court the jurisdiction to resolve those specific issues as described within the *compromis*.

INDEX OF AUTHORITIES

International Caselaw & International Arbitration Decisions

Case Concerning the Arrest Warrant of 11 April 2000 (Congo v. Belg.), 2002 I.C.J. 121 (February 14) (Joint Separate Opinion of Judge Higgins, Kooijams and Buergenthal). *Available at:* [http:// icj-cij.org](http://icj-cij.org).

The Corfu Channel Case, (United Kingdom/Albania) (Merits) 1949 I.C.J. 4.

International Treaties, Instruments and Documents

Charter of the United Nations, June 26, 1945, art 2, para 4, 59 Stat. 1031; T.S. No. 993; 3 Bevans 1153.

Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316; 75 U.N.T.S. 135.

Measures to Eliminate International Terrorism, GA Res/49/60, U.N. GAOR, 49th Sess., pt. 1(1995). *Available at* <http://www.un.org/documents/ga/res/49/a49r060.htm>.

S.C. Res. 1373 U.N. SCOR, 4385 Mtg, S/RES/1373 (2001). *Available at:* [http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1373\(2001\)](http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1373(2001)).

S.C. Res. 1377, U.N. SCOR, 4413th Mtg, (2001) *Available at:* <http://www.un.org/News/Press/docs/2001/sc7207.doc.htm><http://daccessdds.un.org/doc/UN>.

United Nations Convention on Jurisdictional Immunities of States and Their Property, art 1. *See* G.A. Res. 59/38, Annex, *Fifty-ninth Session, Supplement No. 49 (A/59/49)*. Not yet in force.

United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982).

United Nations Convention on the Traffic of Illicit Narcotics and Psychotropic Substances, Nov. 11, 1990, art. 4. *Available At:* http://www.unodc.org/pdf/convention_1988_en.pdf.

Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95; 23 U.S.T. 3227.

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969).

Domestic Case Law

Hamdam v. Rumsfeld, 126 S.Ct. 2749 (2006).

Khalid v. Bush, 355 F.Supp.2d 311 (D.D.C., 2005).

R v. Khawaja, 2006 WL 3031774 (Ont. S.C.J.), 2006 CarswellOnt 65512.

Sosa v. Alvarez, 542 U.S. 692 (2004).

Tachiona v. Mugabe, 169 F. Supp 2d. 259 (S.D.N.Y. 2001).

United States v. Best, 304 F.3d 308 (3rd Cir 2002).

United States v. Cardales, 168 F.3d 548 (C.A.1.P.R. 1999).

United States v. McPhee, 336 F.3d 1269 (11th Cir 2003).

United States v. Normandin, 378 F. Supp.2d 4 (D.P.R. 2005).

United States v. Perez-Oviedo, 281 F.3d 400 (C.A.V.I. 2002).

Domestic Statutes

21 U.S.C.A. § 881 (a)(4) (2002).

U.S. Const. art. II, § 2, cl. 2.

Treatises and Books

Barry E. Carter et al., *International Law*, (4th ed. 2004).

Claus Kre, *The Twists and Turns of Universal Jurisdiction*, 4 J. Int'l Crim. Just. 561, (2006).

Naomi Roht-Arriaza, *Guatemala Genocide Case*. Judgment No. STC 237/2005, 100 AMJIL 207, (2006).

Other Sources

Authorization for Use of Military Force, Pub.L. 107-40, §§ 1-2, 115 Stat. 224 (Sept 18, 2001).

Batram Brown, *Universal Jurisdiction: Is Universal Jurisdiction Permissive or Mandatory? The Evolving Concept of Universal Jurisdiction*, 35 New Eng. L. Rev. 383, (2001).

Canada's Head of State. Available at: <http://fraser.cc/FlagsCan/Nation/StateHead.html>.

Douglas R. Burgess, Jr. *Hostis Humani Generi: Piracy, Terrorism and a New International Law*, 13 U. Miami Int'l & Comp. L. Rev. 293, (2006).

Emanuel Gross, *Legal Aspects of Tackling Terrorism: The Balance Between the Right of a Democracy to Defend itself and the Protection of Human Rights*, 6 UCLA J. Int'l L. & Foreign Aff. 89, (2001).

Emanuel Gross, *Thwarting Terrorist Acts By Attacking the Perpetrators or Their Commanders as an act of Self-Defense: Human Rights Versus the State's Duty to Protect its Citizens*, 15 Temp. Int'l & Comp. L.J. 195, (2001).

Eric Engle, *Extraterritorial Corporate Criminal Liability: A Remedy for Human Rights Violations*, 20 STJLC 287, (2006).

Eric Surette, *Applicability of Diplomatic Immunity Under the Vienna Conventions on Diplomatic Relations Act*, 1 A.L.R. Fed. 2d 351, §33 (2005).

Frank A. Biggio, *Neutralizing the Threat: Reconsidering Existing Doctrines in the Emerging War on Terrorism*, 34 Case W. Res. J. Int'l L. 1, (2002).

Jorg Kammerhofer, *Uncertainty in the Formal Sources of International Law: Customary International Law and Some of its Problems* (2004). Available at: <http://ejil.oxfordjournals.org>.

John Negroponte, *Letter dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council*, U.N. Doc. S/2001/946, (2002).

Jonathan Ulrich, *The Gloves Were Never On: Defining the President's Authority to Order Targeted Killing in the War Against Terrorism*, 45 Va. J. Int'l L. 1029, (2005).

Norman G. Printer, Jr., *The Use of Force Against Non-State Actors Under International Law: An Analysis of the U.S. Predator Strike in Yemen*, 8 UCLA J. Int'l L. & Foreign Aff. 331, (2003).

Robert f. Tepliz, *Taking Assassination Attempts Seriously; Did the US Violate International Law in Forcefully Responding to the Iraqi Plot to Kill George Bush?*, 28 Cornell Int'l L.J. 569, (1995).

U.S. State Department *Progress Report on The Global War on Terrorism*, September 2003. Available at: <http://www.state.gov/>.

Ved Nanda, *Immunity of Individuals Under International Law*, 3 Transnational Business Transactions § 15:3 (2006).

White House Memorandum, *Humane Treatment of Taliban and Al-Qaeda detainees*, CBG / AP & CNN – 2004.06.22 (Feb. 7, 2002), Available at: http://www.justicescholars.org/pegc/archive/White_House/bush_memo_20020207_ed.pdf.

SUMMARY OF THE ARGUMENTS

The United States did not violate International law when it boarded, searched and seized the *Maple Princess*, on the high seas. First, the United Nations Convention on the Law of the Sea (UNCLOS) finds that a party has consented to a treaty when it is ratified. Although President Clinton signed the treaty in 1994 it has not been ratified. Therefore the United States is not bound by the UNCLOS.

Second, the targeted killing of Aziz was not prohibited since the United States was defending itself against terrorists. Aziz was the primary financial supporter of Al-Qaeda, a non state actor that operates autonomously outside the borders of any state. Therefore, Aziz is an enemy combatant and the Geneva Conventions do not apply. Furthermore, the United States has declared war on terrorism and has an inherent right of self defense as governed by the U.N. Charter.

Third, the exercise of universal jurisdiction over *The Maple Princess* did not violate international law as terrorism qualifies as an international crime and international law does not prevent it. Terrorism has been condemned and suppressed through *opinio juris* and consistent state practice. Therefore because terrorism is an international crime affecting all nations and because international law does not prohibit it, the United States actions were lawful.

Lastly, head of state immunity does not prevent the forfeiture proceedings of *The Maple Princess*. The United States properly seized the vessel pursuant to 21 USC § 881 which comports with the United Nations Convention of Illicit Traffic in Narcotics and Psychotropic Substances. Because the Prime Minister is a head of government and not head of state, he enjoys limited immunity. The vessel is his private property leased for a commercial activity and therefore is not precluded from the forfeiture proceedings.

ARGUMENT

I. THE UNITED STATES DID NOT VIOLATE THE LAW OF THE SEA WHEN IT BOARDED THE MAPLE PRINCESS

The United Nations Convention on the Law of the Sea (UNCLOS) was “designed to promote the peaceful uses of the seas and oceans”¹ and calls on all states to refrain from any threat or use of force inconsistent with the principles of international law.²

A. *The United States is not a party to the United Nations Convention on the Law of the Sea*

A treaty enters into force by a state that ratifies the convention³ in accordance with the Vienna Conventions.⁴ Article 82 of the Vienna Convention requires that ratification “be deposited with the Secretary-General of the United Nations.”⁵ Although the United States (US) signed UNCLOS in 1994, the senate has not ratified this convention and has yet to do so.⁶ The constitution of the US requires the president to sign a treaty before it has been ratified with the advice and consent of two thirds majority of the senate.⁷ The senate has not given their advice and consent necessary for ratification. Therefore the US is not a party to UNCLOS and is not afforded its force of law⁸ as governed by the US constitution, the law of the sea and the Vienna Convention. However even if this Court finds the US bound to the UNCLOS through customary international law, the US responded appropriately when it boarded *The Maple Princess*.

¹ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3, 397; 21 I.L.M. 1261 (1982) [hereinafter UNCLOS].

² *Id.* at preamble.

³ *Id.* at art. 308.

⁴ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969) [not recorded with the State Department], [hereinafter Vienna Convention].

⁵ *Id.* at art. 82.

⁶ *United States v. Best*, 304 F.3d 308 (3rd Cir 2002).

⁷ U.S. Const. art. II, § 2, cl. 2.

⁸ *United States v. McPhee*, 336 F.3d 1269 (11th Cir 2003).

B. The United States fulfilled all international obligations when it boarded The Maple Princess as she was engaging in piracy on the high seas

The actions the US took when it boarded *The Maple Princess* comport with UNLCOS as she was engaging in piracy on the high seas through transporting a key financier of terrorism. Any vessel engaging in piracy on the high seas is entitled to be boarded by the Navy⁹ and any ship located outside the exclusive economic zone is considered to be on the high seas.¹⁰ *The Maple Princess* was located 260 nautical miles east of Nova Scotia when it was boarded by US Navy Seals.¹¹ Since *The Maple Princess* was engaging in piracy on the high seas, the US Navy Seals acted appropriately when they boarded her.

Article 101 of UNCLOS explains that piracy encompasses any voluntary participation in the operation of a ship consisting of any act of insightful or intentional facilitation of illegal acts of violence.¹² Piracy is considered the legal genesis of modern organized terrorism as pirates are enemies of the human race (*hostis humani*).¹³ Terrorism is the modern day piracy¹⁴ because they have no legitimacy reserved to them as states.¹⁵

Terrorism and piracy are synonymous for various reasons as both represent the “concept of state versus non state conflict.”¹⁶ The use of terror is central to piracy and represents the first use of terror as a means of coercion by a non state actor against the nation state itself.¹⁷ Additionally, the “modern day terrorist suddenly attacks, moves covertly around the world like

⁹ UNCLOS, *supra* note 1, art. 110.

¹⁰ UNCLOS, *supra* note 1, art. 86.

¹¹ *Compromis*, para. 7.

¹² UNCLOS, *supra* note 1, art. 101.

¹³ Douglas R. Burgess, Jr. *Hostis Humani Generi: Piracy, Terrorism and a New International Law*, 13 U. Miami Int'l & Comp. L. Rev. 293, 299-300 (2006).

¹⁴ *Id.*

¹⁵ *Id.* at 297-298.

¹⁶ *Id.*

¹⁷ *Id.*

pirates on the open sea, wages terror and then hides.”¹⁸ This equates the traditional definition of pirates to modern day terrorists as both are enemies of human kind.¹⁹

Since terrorists are like pirates in that they are enemies of human kind, the US acted appropriately in suppressing the commission of piracy. Aziz was the key financier of Al-Qaeda and was using his business in Ireland to funnel funds across the Atlantic aboard *The Maple Princess*.²⁰ Aziz was financing an illegitimate non state terrorist organization that has committed acts of violence. Moreover, international law places a duty upon states to cooperate in the repression of piracy.²¹ The US acted appropriately in its duty to repress piracy. Therefore the boarding of *The Maple Princess* was lawful under the UNCLOS and international law.

C. The United States complied with international law when the US Coast Guard boarded and seized The Maple Princess

Drug trafficking is a universally condemned problem with growing links to terrorism.²² Article 108 of UNCLOS calls on states to “cooperate with the suppression of illicit traffic in narcotic drugs and psychotropic substances.”²³ It explains that any state “may request the cooperation of other States to suppress such traffic.”²⁴ The US Coast Guard boarded *The Maple Princess* after its Navy suspected that it was engaged in the illicit traffic of narcotics upon confirming the presence of more than \$20 million worth of Afghan heroin. Therefore the Coast Guard exercised proper authority in boarding and seizing *The Maple Princess* and taking its passengers to Portsmouth Harbor in compliance with UNCLOS. Applicant may contend that the

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Compromis*, para. 4.

²¹ UNCLOS, *supra* note 1, art. 100.

²² *United States v. Perez-Oviedo*, 281 F.3d 400 (C.A.V.I. 2002).

²³ UNCLOS, *supra* note 1, art. 108.

²⁴ *Id.*

US exceeded its authority over the vessel since Applicant never gave its express consent, however UNCLOS explains that a state may request consent.²⁵ No express consent is required. Additionally, Applicant has waived objection to the boarding of its vessel in the past.²⁶ Since Applicant has not required their express consent in boarding a Canadian vessel carrying narcotics in international waters,²⁷ Applicant has given its implied consent to board a ship for purposes of the suppression of illicit narcotics. Therefore no express consent from Applicant is required. Consequently the US acted in conformity with the UN and with the prior consent of Applicant in its actions aboard *The Maple Princess*.

II. INTERNATIONAL LAW DOES NOT PROHIBIT THE TARGETED KILLING OF TERRORIST AZIZ

A. *The United States has declared a global war on terror*

International law was not violated in conducting the targeted killing of terrorist Aziz since international law does not prohibit the targeted killing of terrorists. The US is at war on terror. Terrorism is the use of violence and the imposition of fear to achieve a particular purpose.²⁸ It is the explicit and deliberate destruction or threat of destruction of nonmilitary, non-governmental personnel²⁹ and no state is immune to it.”³⁰ After the terrorist attacks of September 11, 2001,

²⁵ UNCLOS, *supra* note 1, art. 108.

²⁶ *United States v. Normandin*, 378 F. Supp.2d 4, 9 (D.P.R. 2005).

²⁷ *Id.*

²⁸ Emanuel Gross, *Legal Aspects of Tackling Terrorism: The Balance Between the Right of a Democracy to Defend itself and the Protection of Human Rights*, 6 UCLA J. Int’l L. & Foreign Aff. 89, 97 (2001).

²⁹ Emanuel Gross, *Thwarting Terrorist Acts By Attacking the Perpetrators or Their Commanders as an act of Self-Defense: Human Rights Versus the State’s Duty to Protect its Citizens*, 15 Temp. Int’l & Comp. L.J. 195, 201 (2001).

³⁰ Gross, *supra* note 28, at 89.

President George W. Bush declared war on terror whereby the US and allied nations undertook a worldwide campaign to eliminate the threat posed by terrorists such as Al-Qaeda.³¹

1. The United States acted in conformity with the United Nations Global Counter Terrorism Strategy to suppress terrorism

Following the terrorist attacks of 2001, the UN adopted Security Council Resolution 1373 reaffirming the “unequivocal condemnation” of terrorist attacks, and the recognition that international terrorism constitutes a threat to international peace and security.³² In response, the Security Council called on all states to “combat by all means . . . threats to international peace and security caused by terrorist acts.”³³ In response to the campaign to eliminate terror and the attacks of 2001, Congress passed the Authorization for Use of Military Force (AUMF) authorizing the President to³⁴ “use all necessary and appropriate force . . . in order to prevent any future acts of international terrorism against the United States.”³⁵ The President complied with the Security Council and the AUMF in issuing Presidential Decision Directive (PDD 2006-08), directing the “targeted killing of Osama bin Laden’s chief financier, Aziz”³⁶ which was a necessary and appropriate use of force. The US National Security Agency (NSA) confirmed the Central Intelligence Agency’s (CIA) suspicions that Aziz was the primary financial figure in the Al-Qaeda terrorist organization and that he was using his import-export business to funnel millions of dollars to various Al-Qaeda cells throughout the world. Consequently, the US disrupted the financing of Al-Qaeda by removing their chief financier and preventing the funding

³¹ Jonathan Ulrich, *The Gloves Were Never On: Defining the President’s Authority to Order Targeted Killing in the War Against Terrorism*, 45 Va. J. Int’l L. 1029, 1030 (2005).

³² S.C. Res. 1373 U.N. SCOR, 4385 Mtg, S/RES/1373 (2001). Available at: [http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1373\(2001\)](http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1373(2001)).

³³ *Id.*

³⁴ *Khalid v. Bush*, 355 F.Supp.2d 311 (D.D.C., 2005).

³⁵ Authorization for Use of Military Force, Pub.L. 107-40, §§ 1-2, 115 Stat. 224 (Sept 18, 2001).

³⁶ *Compromis*, para. 6.

of future terrorist attacks. Therefore the Navy Seals acted appropriately when they boarded *The Maple Princess* and executed the targeted killing of Aziz in compliance with the UN, the AUMF, and the global war on terror.

2. Aziz is not afforded the same protections as states since he is a non-state actor

Al-Qaeda and Aziz are both non state actors that cannot be afforded the same protections of states since they operate autonomously without any connection to a state. Applicant may argue that the UN Charter prohibits the use of force; however Article 2(4) explains that member states are prohibited from using force against another state.³⁷ This argument is without merit since Aziz is a non state actor. Therefore he cannot be protected from the UN Charters prohibition on the use of force.

Applicant may additionally argue that use of force was contrary to Geneva Conventions, however the Geneva Conventions only apply to state actors.³⁸ The President has explained that Geneva conventions only apply to conflicts involving high contracting parties which assume the existence of regular armed forces that can only be states.³⁹ He has also explained that members of Al-Qaeda are unlawful enemy combatants that cannot be afforded the principles of Geneva.⁴⁰ Although the US Supreme Court has held that Geneva conventions apply to members of Al-Qaeda,⁴¹ it is limited to members who were fighting with the Taliban in Afghanistan. Aziz is not a high contracting party fighting in Afghanistan. Nor is he financing terror on behalf of

³⁷ Charter of the United Nations, June 26, 1945, art 2, para 4, 59 Stat. 1031; T.S. No. 993; 3 Bevens 1153 [hereinafter U.N. Charter].

³⁸ Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316; 75 U.N.T.S. 135.

³⁹ See White House Memorandum, *Humane Treatment of Taliban and Al-Qaeda detainees*, CBG / AP & CNN – 2004.06.22 (Feb. 7, 2002), Available at: http://www.justicescholars.org/pegc/archive/White_House/bush_memo_20020207_ed.pdf.

⁴⁰ *Id.*

⁴¹ *Hamdam v. Rumsfeld*, 126 S.Ct. 2749, 2794-97 (2006).

Applicant. Instead he is financing the commission of terrorism which commit acts of violence against innocent civilians. Consequently the Geneva Conventions cannot be applied to Aziz.

Applicant may further argue *Corfu Channel*, asserting that the US exceeded its authority in using force because no state has a right to knowingly cause injury to the territory of another state.⁴² However unlike the ruling in *Corfu* where Albania was held to have had a duty to warn of the presence of land mines in territorial waters,⁴³ the US did not use force or knowingly cause injury to Applicant and it had no duty to warn of its mission. The US only used force against Aziz, a non-state terrorist who was the chief financier of the Al-Qaeda terrorist organization that has declared war against the US.⁴⁴ Therefore the use of force is not prohibited by the charter.

B. The United States acted in self defense to prevent future terrorist attacks

Under international law, the use of force must comply with *jus in bello*,⁴⁵ laws governing a states resort to use force and the means with which force can be used.⁴⁶ *Jus in Bello* requires that force may only be used against persons or objects contributing to an opponent's war effort whose total or partial destruction is expected to contribute to the successful conclusion of hostilities.⁴⁷ "In the war on terror, each terrorist death, particularly that of leaders like bin Laden, undoubtedly makes it more difficult for the enemy to coordinate and carry out hostilities against" the US.⁴⁸

⁴² The Corfu Channel Case, (United Kingdom/Albania) (Merits) 1949 I.C.J. 4, p.22 [hereinafter Corfu Channel].

⁴³ *Id.* at 22-23.

⁴⁴ Frank A. Biggio, *Neutralizing the Threat: Reconsidering Existing Doctrines in the Emerging War on Terrorism*, 34 Case W. Res. J. Int'l L. 1, 13 (2002).

⁴⁵ Ulrich, *supra* note 31, at 1046.

⁴⁶ *Id.*

⁴⁷ Norman G. Printer, Jr., *The Use of Force Against Non-State Actors Under International Law: An Analysis of the U.S. Predator Strike in Yemen*, 8 UCLA J. Int'l L. & Foreign Aff. 331, 369 (2003).

⁴⁸ Ulrich, *supra* note 31, at 1052.

This is true for key financial operatives such as Aziz. Although it is true that the UN Charter prohibits the aggressive use of force, it is subject to two exceptions: when necessitated by self-defense, or when authorized by the Security Council.⁴⁹

1. The United States complied with the Caroline Doctrine

Self defense, in customary international law, is embodied in a doctrine known as the “Caroline Doctrine.”⁵⁰ The Caroline was a US steamboat that carried supplies from N.Y to an island between the boarder of the US and Canada in 1837.⁵¹ In order to prevent more supply trips, the British ordered the ship destroyed setting her a fire and sending her over Niagara Falls.⁵² The British justified the action claiming self-defense and established the four legal requirements for a valid claim of self defense: “an imminent threat, a necessary action, a proportionate response, and the exhaustion of peaceful means prior to taking the action.”⁵³

In analyzing the four elements, it has been stated that bin Laden and his followers pose a “serious and imminent a threat as [anyone] can imagine.”⁵⁴ Past terrorist attacks on the US coupled with the possible threat of future terrorist attacks is enough to satisfy the imminent requirement.

Since the threat was imminent, it was necessary for the US to act quickly and remove it.⁵⁵ Once the US had compelling evidence that Aziz was involved with Al-Qaeda and that he was funding future terrorist attacks, the President reduced the possibility of another terrorist attack by

⁴⁹ *Id.* at 1046.

⁵⁰ Robert f. Tepliz, *Taking Assassination Attempts Seriously; Did the US Violate International Law in Forcefully Responding to the Iraqi Plot to Kill George Bush?*, 28 Cornell Int’l L.J. 569, 578 (1995).

⁵¹ *Id.* at 575-578.

⁵² *Id.*

⁵³ *Id.* at 577.

⁵⁴ Biggio, *supra* note 44, at 35.

⁵⁵ Templiz, *supra* note 50, at 611.

removing a key element in the preparation of another attack,⁵⁶ satisfying the second requirement of necessity.

The third requirement is proportionality. If an attempt was made to minimize the damage to life and property, then the requirement of proportionality is satisfied.⁵⁷ Navy seals boarded *The Maple Princess* at night and carefully examined the surroundings. They knew there were four passengers aboard the ship which the Navy Seals safely tranquilized. This was done to minimize damage to the ship and protect the safety of the other passengers while carefully eliminating terrorist Aziz. Since an attempt to minimize damage to life and property was made, the proportionality requirement has been satisfied.

The last requirement is whether the action was taken as a last resort in protecting against the threat.⁵⁸ This condition is satisfied if the victim state attempted to resolve the crisis through peaceful means, or if the victim state could later show that such an attempt was impracticable or unlikely to succeed.⁵⁹ Neither Aziz nor Al-Qaeda are state actors. The US has attempted to resolve terrorism diplomatically, however terrorism does not operate through such visible means.⁶⁰ Terrorism employs many tactics that are illicit in nature, such as hijacking, murder, kidnapping, weapons smuggling, and drug trafficking.⁶¹ Additionally, any other attempt to resolve the crisis through peaceful means would be impracticable or unlikely to succeed as the US would become an open target. Consequently, the US has satisfied the fourth requirement and was justified in its action aboard *The Maple Princess*.

⁵⁶ *Id.*

⁵⁷ Gross, *supra* note 26, at 219.

⁵⁸ Templiz, *supra* note 50, at 612.

⁵⁹ *Id.*

⁶⁰ Biggio, *supra* note 44, at 16.

⁶¹ *Id.* at 16-17.

2. The United States acted in self defense in compliance with the United Nations

Article 51 of the UN Charter states that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”⁶² The Security Council did not denounce the use of force after the US informed them that it had initiated actions pursuant to its right of self defense in accordance with Article 51 of the Charter following the attacks of September 11, 2001 in.⁶³ Article 51 allows for pre-emptive self defense against future terrorist attacks. Consequently the Security Councils acquiescence to the actions taken by the US following the attacks constitute consent.⁶⁴ Therefore the US acted properly in self defense in its removal of terrorist Aziz to prevent future terrorist attacks in accordance with the Security Council and Article 51 of the UN Charter.

III. THE UNITED STATES EXERCISE OF UNIVERSAL JURISDICTION OVER THE MAPLE PRINCESS WAS LAWFUL UNDER INTERNATIONAL LAW

The US acted in accordance with international law when it exercised jurisdiction over *The Maple Princess*. Universal jurisdiction over specified acts is a result of “universal condemnation of those activities and general interests in cooperating to suppress them.”⁶⁵ The international community has consistently condemned and set forth measures to suppress terrorism and illegal drug trafficking.

⁶² UN Charter, *supra* note 37, art. 51.

⁶³ John Negroponce, *Letter dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council*, U.N. Doc. S/2001/946, (2002).

⁶⁴ Ulrich, *supra* note 31, at 1048.

⁶⁵ Barry E. Carter et al., *International Law*, at 699 (4th ed. 2004).

A. Exercise of universal jurisdiction is lawful against international crimes under customary international law

Universal jurisdiction is based on customary international law.⁶⁶ The Vienna Convention law of treaties state that customary international law will “govern matters not expressly related by the provisions of the conventions.”⁶⁷ Because the matters at issue are not part of the provisions of the applicable treaties, customary international law must govern.⁶⁸ Customary international law is established based on state practice and *opinio juris*⁶⁹ which recognize terrorism as an international crime. Consequently, if a crime is deemed an international crime it is subject to universal jurisdiction.⁷⁰

1. Terrorism is recognized as an international crime by *opinio juris* of states

The General Assembly Declaration on Measures to Eliminate International Terrorism, reaffirms that financing of terrorism is an international crime.⁷¹ The resolution declares methods and practices of terrorism constitute “grave violations of the purposes and principles of the UN.”⁷² The financing of acts thereof the UN because they pose “a threat to international peace and security to all nations.”⁷³

Furthermore, under the UN Charter Article 24, the Security Councils primary responsibility is for the maintenance of international peace and security and acts on behalf of the UN

⁶⁶ Claus Kre, *The Twists and Turns of Universal Jurisdiction*, 4 J. Int’l Crim. Just. 561, 568-575 (2006).

⁶⁷ Vienna Convention, *supra* note 4, preamble.

⁶⁸ *Id.*

⁶⁹ Jorg Kammerhofer, *Uncertainty in the Formal Sources of International Law: Customary International Law and Some of its Problems* (2004). Available at: <http://ejil.oxfordjournals.org>.

⁷⁰ Eric Engle, *Extraterritorial Corporate Criminal Liability: A Remedy for Human Rights Violations*, 20 STJL 287, 291 (2006).

⁷¹ Measures to Eliminate International Terrorism, GA Res/49/60, U.N. GAOR, 49th Sess., pt. 1(1995). Available at <http://www.un.org/documents/ga/res/49/a49r060.htm>.

⁷² *Id.* at pt. 2.

⁷³ *Id.*

Members.⁷⁴ UN Security Council Resolution 1373 requires all states to deny safe-haven and prevent the movement of terrorists across borders.⁷⁵ The resolution also mandates all states to prevent and suppress terrorist financing.⁷⁶ Applicant is obligated under this resolution to act and respond to terrorists and specifically deny safe-haven to such criminals. The fact that Applicant has not taken action against Aziz as the primary financial supporter of Al-Qaeda and still provides a safe-haven to him is alarming and illustrates that the Applicant is not conforming to its international obligations.

The Security Council Resolution 1377 declared terrorism as the “most serious threats to international peace and security . . . in the twenty-first century which constitute a challenge to all countries and all humanity”⁷⁷ Given that universal jurisdiction applies to crimes against the laws of nations, and terrorism is such a crime, the US’ exercise of universal jurisdiction over *The Maple Princess* was lawful.

The terrorism conventions passed since 1973 consider terrorism a grave concern for the international community and provide evidence of the practice.⁷⁸ The UN Conventions were enacted to “ensure that states have universal jurisdiction to prosecute and punish these crimes as an extension of the universal jurisdiction states already have in customary international law.”⁷⁹ The CIA and the NSA confirmed that Aziz was the “financial mastermind”⁸⁰ of Al-Qaeda and exercising jurisdiction over *The Maple Princess* was “necessary to prevent future attacks against

⁷⁴ U.N. Charter, *supra* note 37, art. 1.

⁷⁵ S.C. Res. 1373 U.N. SCOR, *supra* note 32, preamble.

⁷⁶ *Id.*

⁷⁷ S.C. Res. 1377, U.N. SCOR, 4413th Mtg, (2001) Available at:

<http://www.un.org/News/Press/docs/2001/sc7207.doc.htm><http://daccessdds.un.org/doc/UN>.

⁷⁸ *R v. Khawaja*, 2006 WL 3031774 (Ont. S.C.J.), 2006 CarswellOnt 65512.

⁷⁹ *Id.*

⁸⁰ *Compromis*, para. 4.

the United States.”⁸¹ Provisions of the preamble of the conventions, coupled with consistent state practice provide conclusive evidence of customary international law.

2. Consistent state practice supports the exercise of universal jurisdiction

“Over 170 nations continue to participate in the war on terrorism.”⁸² Numerous countries have an expanded view of universal jurisdiction.⁸³ In *Sosa v. Alvarez*, for example, the US exercised jurisdiction over the defendant because he had committed a crime against international law in another country.⁸⁴ Additionally Belgium has codified legislation that “asserts universal jurisdiction over acts broadly defined as ‘grave breaches of international law.’”⁸⁵ Incidentally this law was at the center of *Congo v. Belg.* before the ICJ.⁸⁶ *Congo* addressed whether an arrest warrant issued in Belgium against the Foreign Minister of Congo for crimes against humanity was lawful under universal jurisdiction and if so, whether head of state immunity precluded the Foreign Minister from Belgium’s jurisdiction.⁸⁷ The court did not rule on the matter of jurisdiction, however, because the court ruled on immunity and immunity is predicated on jurisdiction, the inference is that jurisdiction in this case was lawful.⁸⁸

3. Territorial link is not required

⁸¹ *Id.* at para. 6.

⁸² U.S. State Department *Progress Report on The Global War on Terrorism*, September 2003. Available at: <http://www.state.gov/>.

⁸³ Naomi Roht-Arriaza, *Guatemala Genocide Case*. Judgment No. STC 237/2005, 100AMJIL 207, 211 (2006).

⁸⁴ *Sosa v. Alvarez*, 542 U.S. 692 (2004).

⁸⁵ Case Concerning the Arrest Warrant of 11 April 2000 (*Congo v. Belg.*), 2002 I.C.J. 121 (February 14) (Joint Separate Opinion of Judge Higgins, Kooijams and Buergentha). Available at: <http://icj-cij.org>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at para. 33.

Customary international law does not require a link between the defendant and certain heinous crimes.⁸⁹ The joint separate opinion in *Congo* states, “there is clear indication pointing to the gradual evolution of a significant principle of international law to that effect.”⁹⁰ Judge Higgins, Kooijams and Buergenthal state that there are “indications that universal criminal jurisdiction for certain international crimes is clearly not regarded as unlawful and opens the doors to jurisdiction based on the heinous nature of the crime rather than on the links of territoriality or nationality.”⁹¹ Therefore because universal jurisdiction is over crimes against the international community, and [terrorism qualifies as such a crime], territorial presence is not required.⁹²

Moreover, universal jurisdiction is an evolving doctrine, applies to enemies of all mankind,⁹³ and occurs outside the jurisdiction of nation states.⁹⁴ Therefore the concept of universal jurisdiction is a “functional one based on the need to remedy the inability of the decentralized international system to enforce even its most fundamental laws.”⁹⁵

B. Exercise of universal jurisdiction was in compliance with the United Nations

The United Nations Convention against Illicit Traffic in Narcotic and Psychotropic Substances (The 1988 Convention) was instituted in order to address the significant rise in the traffic of illegal drugs and its relationship to “other illicit criminal activities that threaten the

⁸⁹ *Id.* at para. 46.

⁹⁰ *Id.* at para. 52.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Batram Brown, *Universal Jurisdiction: Is Universal Jurisdiction Permissive or Mandatory? The Evolving Concept of Universal Jurisdiction*, 35 New Eng. L. Rev. 383, 383 (2001).

⁹⁴ Douglas R. Burgess, *supra* note 13, at 300.

⁹⁵ US State Department, *supra* note 83.

stability and security of sovereign states.”⁹⁶ This Convention specifically addresses the offenses concerning the transportation of illegal substances that both countries are party to.

Specifically, The 1988 Convention Article 4 (b)(iii) states, “[e]ach party shall take such measures as may be necessary to establish its jurisdiction over offences that [have] been committed outside of its territory with a view to the commission within its territory.”⁹⁷ It was foreseeable for the US to view this offence as one that would be commissioned within its territory because “the United States is the world’s most heavily trafficked market in narcotics trade.”⁹⁸

The Maple Princess was transporting over \$20 million in heroin by a terrorist. The aforementioned treaty specifically calls for states to exercise jurisdiction when the crime could be commissioned on its territory. Moreover, the treaty is expressly concerned with the connection between the traffic of drugs and organized crime.⁹⁹ The status of *The Maple Princess* falls squarely within the language of the treaty, therefore the exercise of jurisdiction over *The Maple Princess* was lawful under international law.

Alternatively, the exercise of jurisdiction was lawful under the protective principle. Under the protective principle of international law “a nation is permitted to assert jurisdiction over a person whose conduct outside the nations’ territory threatens the nation’s security.”¹⁰⁰ The US has been attacked by Al-Qaeda domestically and abroad. Congress has determined that drug

⁹⁶ United Nations Convention on the Traffic of Illicit Narcotics and Psychotropic Substances, Nov. 11, 1990, art. 4. [Hereinafter The 1988 Convention]. Available at: http://www.unodc.org/pdf/convention_1988_en.pdf.

⁹⁷ *Id.*

⁹⁸ *Normandin*, 378 F. Supp.2d at 9.

⁹⁹ The 1988 Convention, *supra* note 96, preamble.

¹⁰⁰ *United States v. Cardales*, 168 F.3d 548, 553 (C.A.1.P.R. 1999).

trafficking presents a specific threat to the US.¹⁰¹ Therefore because of the significant threat that terrorism and drug trafficking pose to the US, the exercise of jurisdiction was lawful in order to protect the security of the nation.

Concisely, the UN Charter was created with the purpose to promote and “maintain international peace and security.”¹⁰² The scope and impact of terrorism and illicit drug trafficking to the global community was not comprehended in the 1940’s. Today they are both regarded as international crimes that affect the peace and security of all nations. “We must remain on the offensive, preemptively stopping terrorists seeking to do harm against the United States, its citizens and partners, and creating an international environment inhospitable to terrorism.”¹⁰³ In the spirit of the UN Charter and in accordance with *opino juris* and consistent state practice, the US exercise of universal jurisdiction over *The Maple Princess* was lawful under international law.

IV. HEAD OF STATE IMMUNITY DOES NOT PREVENT THE FORFEITURE PROCEEDINGS AGAINST THE MAPLE PRINCESS UNDER 21 U.S.C. § 881

Head of State immunity is not clearly defined or codified into international law.¹⁰⁴ Therefore it is up to municipal courts to determine who is a head of state and when the exception should apply.¹⁰⁵ Because the US forfeiture proceedings comport with international law and the Prime Minister of Canada is not a Head of State, immunity does not apply.

A. United States forfeiture proceedings comport with international law

¹⁰¹ *Id.*

¹⁰² U.N. Charter, *supra* note 37, art. 1.

¹⁰³ US State Department, *supra* note 83.

¹⁰⁴ Ved Nanda, *Immunity of Individuals Under International Law*, 3 Transnational Business Transactions § 15:3 (2006).

¹⁰⁵ Eric Surette, *Applicability of Diplomatic Immunity Under the Vienna Conventions on Diplomatic Relations Act*, 1 A.L.R. Fed. 2d 351, §33 (2005).

The 1988 Convention was intended to address the “deep concern in the traffic in narcotic drugs, that illicit traffic is an international criminal activity which demands urgent attention and the highest priority.”¹⁰⁶ Article 5 (2) authorizes contracting states to implement domestic measures to seize property used in transportation of illicit drugs.¹⁰⁷ Both countries have consented to this treaty.

The US implemented U.S.C. 21 § 881 in accordance with the aforementioned treaty. This domestic law authorizes US authorities to subject property to forfeiture of all “conveyances...including vessels which are used to transport a controlled substance.”¹⁰⁸ Therefore because Aziz was transporting heroin on *The Maple Princess*, the vessel was exposed to forfeiture proceedings under US domestic law in accordance with international law.

Moreover, the United Nations Convention on Jurisdictional Immunities of States and Their Property does not apply. Article 1 of the convention governs immunity of state and its property from jurisdiction of the courts of another state.¹⁰⁹ This convention is not at issue because the property involved was privately owned by the Prime Minister and primarily used for family vacations.¹¹⁰ Applicant may argue that because the Prime Minister occasionally entertained foreign dignitaries *The Maple Princess* qualifies as state property. This is an erroneous conclusion because under the provisions of the convention, the vessel is privately owned and does not engage in governmental activities.¹¹¹ Therefore it does not apply.

¹⁰⁶ The 1988 Convention, *supra* note 96, preamble.

¹⁰⁷ *Id.* at art. 5 (2).

¹⁰⁸ 21 U.S.C.A. § 881 (a)(4) (2002).

¹⁰⁹ United Nations Convention on Jurisdictional Immunities of States and Their Property, art 1.

See G.A. Res. 59/38, Annex, *Fifty-ninth Session, Supplement No. 49 (A/59/49)*. Not yet in force.

¹¹⁰ *Compromis*, para. 1.

¹¹¹ *Id.*

B. Head of state immunity does not apply

1. The Prime Minister is a head of government

Head of state immunity is not defined in the Vienna Conventions.¹¹² Therefore it is up to municipal courts to decide whether immunity is a defense to a crime.¹¹³ The US District Judge specifically held that Mr. Sharper is a head of government and not head of state.¹¹⁴ “Canada is a constitutional monarchy, and so its head of state is the monarch, the authority of whom has delegated almost completely to the Governor General since 1947.”¹¹⁵ In general the authority to speak on behalf of Canada resides with the Governor General.¹¹⁶ Only heads of state can enjoy absolute immunity.¹¹⁷ Therefore because the Prime Minister is considered a diplomat and not a head of state, he enjoys limited immunity.

2. Vienna Convention on Diplomatic Relations Article 31 (1)(c) excludes immunity when a diplomat is operating in a commercial activity

Under the Vienna Convention on Diplomatic Relations, Article 31 (1)(c), “a diplomatic agent shall enjoy immunity...except in the case of an action relating to any commercial activity exercised by the diplomat...outside of his official functions.”¹¹⁸ This provision reflects a customary norm with 182 members having been in force since 1964.¹¹⁹ When faced with a similar issue regarding a diplomat, a US court held in *Tachiona v. Mugabe*, that it is “well-settled practices of customary international law . . . that inviolability would not apply to bar civil

¹¹² Eric Surette *supra* note 105, at 352.

¹¹³ Ved Nanda, *supra* note 104.

¹¹⁴ *Compromis*, para. 12.

¹¹⁵ Canada’s Head of State. Available at: <http://fraser.cc/FlagsCan/Nation/StateHead.html>.

¹¹⁶ *Id.*

¹¹⁷ Eric Surette, *supra* note 105.

¹¹⁸ Vienna Convention on Diplomatic Relations, Apr. 18, 1961, art. 31, 500 U.N.T.S. 95; 23 U.S.T. 3227.

¹¹⁹ Barry E. Carter, *supra* note 65, at 422.

jurisdiction over foreign rules or diplomats in actions involving their real property abroad or commercial activities.”¹²⁰ Because the Prime Minister was engaged in commercial activity when he “leased” his boat for \$ 500 a month, as a diplomat under the Vienna Convention on Diplomatic Relations, the commercial exception applies and immunity is void.

CONCLUSION

THEREFORE, we respectfully submit that this Honorable Court adjudge and declare that:

- i) The United States did not violate the law of the sea when it boarded, searched, and seized *The Maple Princess*;
- ii) The targeted killing of Aziz on the night of July 16, 2006 was not in violation of international law;
- iii) The United States’ exercise of universal jurisdiction over *The Maple Princess* was lawful under international law; and
- iv) The doctrine of head of state immunity prevents the U.S. judicial forfeiture proceedings against *The Maple Princess*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY

Counsel for Respondent, the Government of the United States (Team #2007-19R).

¹²⁰ *Tachiona v. Mugabe*, 169 F. Supp 2d. 259, 307 (S.D.N.Y. 2001).