
7TH PROFESSOR V. S. MANI MEMORIAL INTERNATIONAL LAW MOOT COURT COMPETITION
2018

Case Concerning the Jurisdiction, Prisoners of War, Damages and Consular Relation

MARSHAL

(APPLICANT)

v.

ARYAN

(RESPONDENT)

On Submission to the International Court of Justice
The Peace Palace, The Hague, Netherlands

Memorial on behalf of Applicant

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	IV-V
INDEX OF AUTHORITIES	VI-XIV
STATEMENT OF JURISDICTION	xv
QUESTIONS PRESENTED	xvi
STATEMENT OF FACTS	xvii-xviii
SUMMARY OF ARGUMENTS	XIX-XX
ARGUMENTS ADVANCED	1-21

ISSUE-I

[1.] WHETHER THE INTERNATIONAL COURT OF JUSTICE HAS JURISDICTION OVER THE CASE? --	1
[1.1] ICJ has contentious jurisdiction under Art. 36(1) of ICJ statute. -----	19
[1.2] ICJ will interpret and apply BA under 36(1) in the present dispute. -----	20
[1.3] Consent to submit a dispute under the BA was explicit and free. -----	20
[1.4] Aryan is obliged to accept the jurisdiction of the court. -----	20
[1.5] All issues of the present dispute can be categorised as subject matter arising out of BA. -	21

ISSUE-II

[2] WHETHER THE TREATMENT METED OUT TO MAJOR DMITRI GODMAN IS BEYOND THE SCOPE OF THIS COURT’S JURISDICTION? -----	22
[2.1] Violation of the Customary International Humanitarian Law. -----	22
[2.1.1] Violation of Jus Cogens norm against torture. -----	24
[2.1.2] Major Dmitri Godman is a person to be protected because he is no longer participating in hostilities. -----	26
[2.2] Violation of bilateral and multilateral treaties and convention. -----	26
[2.2.1] Treaty of BA violated. -----	27
[2.2.2] Violated ICCPR. -----	27

**7TH PROFESSOR V. S. MANI MEMORIAL INTERNATIONAL LAW MOOT COURT
COMPETITION - 2018**

[2.2.2] Violated ICCPR.	27
[2.2.3] Violation of ICESCR.	28
[2.2.4] Violated all the Geneva Conventions and Additional protocol 1.	29
[2.2.5] Violation of other important conventions.	29

ISSUE-III

[3] WHETHER PRISONERS OF WAR SHOULD BE RETURNED BACK TO THE ARYAN?	30
[3.1] There was an International Armed Conflict between Marshal and Aryan.	30
[3.2] There is no absolute international obligation to return POWs of International armed conflict.	30
[3.2.1] The duty to release and return POWs under Geneva Convention relative to the Treatment of Prisoners of War.	30
[3.3] There is no substantial proof of consequential inhuman treatment meted out with POWs.	31
[3.3.1]. Marshal actions were necessary.	32
[3.3.2] Marshal actions were proportionate.	32
[3.3.3] Marshal actions qualify as self-defence.	32
[3.3.4] POWs kept in custody are preventive measure to avoid an armed conflict.	33

ISSUE-IV

[4] WHETHER ARYAN IS ENTITLED TO APPROPRIATE DAMAGES?	34
[4.1] Act of army are attributable to marshal.	34
[4.2] Acts are internationally wrongful act.	35
[4.2.1] Violation of Customary International Law.	36
[4.2.2] Violation of Treaty Law.	37
[4.3] Monetary Loss.	38
[4.4] Harm to the territorial integrity, security, and International standing.....	38

ISSUE-V

**7TH PROFESSOR V. S. MANI MEMORIAL INTERNATIONAL LAW MOOT COURT
COMPETITION - 2018**

[5] WHETHER THE MARSHAL HAS VIOLATED INTERNATIONAL LAW BY DENYING CONSULAR ACCESS TO MR. ALEX? -----	37
[5.1] Right to consular access should be in conformity with the laws and rules of receiving State. -----	37
[5.2] VCCR does not apply to espionage. -----	37
[5.3] Denial of Treaty Rights in Criminal Cases. -----	38
[5.4] Threat to sovereignty and National Security. -----	39
[5.5] Mr. Alex right to consular access is restricted by GC III, and AP I. -----	40
PRAYER OF RELIEF-----	40

LIST OF ABBREVIATIONS

Abbreviations/Symbols	Explanations
AP-I	Additional Protocol 1
AP-II	Additional Protocol 2
Anr.	Another
ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and People's Rights
&	And
App.	Application
Approx.	Approximately
Art.	Article
ARISWA	Draft Articles for Responsibility of States for internationally wrongful acts
BA	Bortex Agreement
CAT	The Convention against torture and other cruel, and Degrading Treatment or Punishment.
Cl.	Clause
CIL	Customary International Law
ECHR	European Convention on Human Rights
Ed.	Edition
Etc.	Etcetera
Godman	Major Dmitri Godman
HPCR	Humanitarian Policy and Conflict Research
HRC	Human Right Commission
Ibid	Ibidem/ same place
Id.	Idem
ICC	International Criminal Court
ICJ	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of Red Cross
ICTY	International Criminal Tribunal for the former

**7TH PROFESSOR V. S. MANI MEMORIAL INTERNATIONAL LAW MOOT COURT
COMPETITION - 2018**

	Yugoslavia
IHL	International Humanitarian Law
ILC	International Law Commission
J.	Journal
LOC	Line of Control
MPEPIL	Max Plank Encyclopaedia of Public International Law
PCIJ	Permanent Court of Justice
Pg.	Page
Pvt.	Private
¶	Paragraph
Supra	Above
i.e.	That is
UDHR	Universal Declaration of Human Rights
UNCTAD	United Nation Conference on Trade and Development
UN.	United Nations
U.S.	United States
v.	Versus
VCCR	Vienna Convention on Consular Relation
VCLT	Vienna Convention on the Law of treaties
Vol.	Volume

LIST OF AUTHORITIES

TABLE OF CASES

1. <i>Cambodia v Thailand</i> , Temple of Preah Vihear, [1962] ICJ Rep 6. -----	21
2. <i>Caroline v. United States</i> , 11 U.S. 7 Cranch 496 496 (1813). -----	29
3. <i>Cameroon v Nigeria</i> , Land and Maritime Boundary between Cameroon and Nigeria, [1998] ICJ Rep 275, ICGJ 64 (ICJ 1998), 11th June 1998, International Court of Justice. - -----	21
4. <i>United Kingdom v. Albania</i> , Corfu Channel, ICJ GL No 1, [1949] ICJ Rep 4. -----	33
5. <i>Democratic Republic of the Congo v. Uganda</i> , Armed Activities on the Territory of the Congo, ICJ GL No 116 (Official Case No) [2005] ICJ Rep 168. -----	20
6. <i>Eritrea v. Ethiopia</i> , ICGJ 350 (PCA 2003). -----	36
7. <i>Germany v. Poland</i> , Factory at Chorzow, 1927 P.C.I.J. (ser. A) No. 9 (July 26). -----	22
8. <i>Germany v. United States of America</i> , LaGrand, ICGJ 515 (ICJ 2017). -----	38
9. <i>Guerrero v. Colombia</i> , Communication No 45/1979 (Application No), UN Doc CCPR/C/15/D/45/1979. -----	25
10. <i>Hungary v Slovakia</i> , Gabčíkovo-Nagymaros Project, ICJ GL No 92 (Official Case No), [1997] ICJ Rep 7. -----	33
11. <i>India v. Pakistan</i> , Jadhav Case ICGJ 515 (ICJ 2017). -----	38
12. <i>Jindal Steel And Power Limited v. M/S. Sap India Pvt. Ltd.</i> , Delhi High Court, 29 June, 2015. -----	22
13. <i>Legality of the Threat or Use of Nuclear Weapons</i> , Advisory Opinion, I.C.J., Advisory Opinion, 1996, I.C.J.266. -----	20
14. <i>Nicaragua v. United States</i> , Military and Paramilitary Activities in and Against Nicaragua, I.C.J. 1984 I.C.J. 39. -----	21
15. <i>Osman v. The United Kingdom</i> , ECHR 28 OCT 1998. -----	27
16. <i>Italy v. France</i> , Phosphates in Morocco, 1938 P.C.I.J. (ser. A/B) No. 74 (June 14). -----	33

**7TH PROFESSOR V. S. MANI MEMORIAL INTERNATIONAL LAW MOOT COURT
COMPETITION - 2018**

17. *Prosecutor v. Delalić (Zejnli) and ors*, Appeal Judgment, Case No IT-96-21-A, ICL 96 (ICTY 2001), 20th February 2001, United Nations Security Council [UNSC]; International Criminal Tribunal for the Former Yugoslavia [ICTY]; Appeals Chamber [ICTY]. -----23
18. *Prosecutor v Furundžija (Anto)*, Trial Judgment, Case No CIHL IT-95-17/1-T, (1999) 38 ILM 317, (2002) 21 ILR 213, [1998] ICTY 3, ICL 17 (ICTY 1998), 10th December 1998, United Nations Security Council [UNSC]; International Criminal Tribunal for the former Yugoslavia [ICTY]; Trial Chamber II [ICTY]. -----23
19. *Prosecutor v. Dragoljub Kunarac Radomir Kovac And Zoran Vukovic*, (Trial Judgement), ICTY, IT-96-23-T. -----23
-

ARTICLES

1. Charlotta Nilsson, The Legality of Anticipatory Self-Defence in International Law. ----29
2. Adam P. Tait, The Legal War: A Justification for Military Action in Iraq. -----30
3. Chapter Vi: Pacific Settlement of Disputes, United Nations. -----19
4. Human Rights Committee General, Comment No. 36 On Art. 6, International Covenant On Civil Political Rights, On The Right To Life. -----25
5. Impact of Armed Conflict On Children; United Nations Report. New York. 1996. -----35
6. Draft Article on Responsibility of States for Internationally Wrongful Acts. -----25, 29, 30, 31, 33, 36
7. “The Economic Costs of Violence Containment.” The Institute for Economics and Peace. -----35
8. T. J. A. Schillings, The Development of the Scope of the Right o Consular Assistance To Nationals Imprisoned Abroad Under International Law. -----40
9. Tejvan pettinger, *Economic Impact Of War*, (March 31, 2017), www.economicshelp.org. -----35
10. A. John Radsan, The Unresolved Equation of Espionage and International Law, Michigan Journal of International Law, Volume 28|Issue 3. -----
-

TREATIES AND CONVENTIONS

1. Charter of the United Nations (1945), 1 U.N.T.S. XVI. -----19
2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1). -----27
3. International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI). -----26
4. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), (1949), 75 UNTS 31. ----23, 26, 34
5. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), (1949), 75 UNTS 85. -----23, 26, 34
6. Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), (1949), 75 UNTS 287. -----23, 26, 34
7. Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), (1949), 75 UNTS 135. -----23, 26, 28, 34
8. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), (1977), 1125 UNTS 3. -----23, 26
9. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (1977), 1125 UNTS 609. -----23, 26
10. International Covenant on Civil and Political Rights (1976), 999 U.N.T.S. 171. -----25, 37, 38
11. Statute of the International Court of Justice, (1946), 33 U.S.T.S. 993. -----19, 21, 33
12. Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868. -----29
13. Rome Statute of the International Criminal Court, 17 July 1998. -----24, 27, 34
14. Vienna Convention on Consular Relations (1967), 596 U.N.T.S. 261. -----37, 40

15. Vienna Convention on the Law of Treaties (1969), 1155 U.N.T.S. 331. -----
-----21, 23, 24
-

BOOKS

1. United Nations, Charter of the United Nations and Statute of the International Court of Justice.
2. Yuval Shany, Questions of Jurisdiction and Admissibility before International Courts (Hersch Lauterpacht Memorial Lectures).
3. Oliver Dörr , Kirsten Schmalenbach, Vienna Convention on the Law of Treaties: A Commentary 2012th Edition.
4. Mark Eugen Villiger, Commentary on the 1969 Vienna Convention on the Law of Treaties.
5. Ian Seiderman, Hierarchy in International Law: The Human Rights Dimension
6. H. Ascensio, Droit international penal.
7. Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law Volume I: Rules.
8. International Committee of the Red Cross, Commentary on the First Geneva Convention : Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
9. International Committee of the Red Cross, Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.
10. Draft Committee, Universal Declaration of Human Rights.
11. Sarah Joseph, The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary.
12. Draft Committee, Handbook on accepting the jurisdiction of the International Court of Justice.
13. Ian Brownlie, Brownlie’s Principles of Public International Law, 6th ed.
14. International Committee of the Red Cross, Protocols Additional to the Geneva Conventions of 12 August. Rev. ed. 1949.
15. Malcolm N. Shaw, International Law, 7th Ed.
16. Council of Europe, European Convention on Human Rights.

**7TH PROFESSOR V. S. MANI MEMORIAL INTERNATIONAL LAW MOOT COURT
COMPETITION - 2018**

- 17.** Charles Pierson (2004). Pre-Emptive Self-Defence in an age of Weapons of Mass Destruction: Operation Iraqi, Denver Journal of International Law and Policy. University of Denver.
-

STATEMENT OF JURISDICTION

Marshal [“Applicant”] and Aryan [“Respondent”] submit this dispute to this Honourable Court, pursuant to Article 36(1) of the Statute of the International Court of Justice and Art.4 of BA. Applicant filed an application instituting proceedings against Respondent, to which Respondent filed its Preliminary Objection. Applicant and Respondent submitted a Joint Written Statement to the Registrar, requesting that the Court decide the jurisdictional questions and merits of this matter based on the rules and principles of general international law. As well as any applicable treaties, and that the Court to determine the legal consequences, including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.

QUESTION PRESENTED

The Aryan respectfully requests the Court to adjudge:

-I-

Whether the International Court of Justice has jurisdiction over the case?

-II-

Whether the treatment meted out to Major Dmitri Godman is beyond the scope of this court's jurisdiction?

-III-

Whether prisoners of war should be returned back to the Aryan?

-IV-

Whether Aryan is entitled to appropriate damages?

-V-

Whether the Marshal has violated International law by denying consular access to Mr. Alex?

STATEMENT OF FACTS

Marshal is a landlocked country. Marshal is ruled by a dictator, General Vadim. Marshal and Aryan had signed an agreement in 1998 known as Bortex Agreement which demarcated a new border line between Aryan and Marshal known as Line of Control (LOC) which also made it mandatory to make the LOC a demilitarized zone.

On the 15th of October 2017, the Aryan army started conducting patrolling operations in the LOC. Major Dmitri Godman went on to ward off the infiltration attempt by the Aryan army along with five other soldiers but Aryan army caught them. It led to a war known as Marshal-Aryan border skirmish. Marshal emerged victorious, annexed the LOC and captured 47000 Prisoners of War (POW) and 100 civilians. The Aryan government requested Marshal to hand over the Prisoners of War (POW) as well as the civilians captured by them, in exchange for Major Godman, along with his five soldiers. Marshal refused the offer because of Aryan's constant indulgence in unnecessary war and aggression. However, Marshal agreed to release the civilians except one namely Mr. Alex, who was detained on the charges of espionage as he belonged to the Aryan Secret Service.

On 2nd February 2018, the Aryan army sent a parcel to the Marshal border outpost containing mutilated body parts of all the soldiers captured by Aryan with Major Godman's name tag appearing on top enclosed with a letter which stated, "*Be prepared, we are going to hit you soon*". Marshal's soldiers were gruesomely tortured including mutilation, permanently disabling or removing an organ and endangering mental and physical health.

General Vadim invoked Article 4, which gives rise to the jurisdiction of ICJ. A notice was accordingly sent to Aryan for the brutalities committed on Major Dmitri Godman, for bringing ICJ jurisdiction into the fray. Aryan firmly opposed ICJ jurisdiction and stated that it doesn't accept the ICJ's jurisdiction.

The ICJ has admitted Marshal's applications to institute written proceedings under Article 36(1) of ICJ statute based on Article 4 of the BA, whereas Aryan filed its objection to the application with a singular ground that it does not consent to the ICJ's jurisdiction and would only appear in court to reiterate the same. Now, the case has been adjudged by ICJ. Both states are the parties of UDHR, ICCPR, ICESR, all Geneva Conventions, the UN Charter, Vienna Convention on the Law of Treaties and the ICJ statute.

SUMMARY OF ARGUMENTS

[1.] WHETHER THE INTERNATIONAL COURT OF JUSTICE HAS JURISDICTION OVER THE CASE?

ICJ has jurisdiction in the present dispute as ICJ has contentious jurisdiction. The jurisdiction of the court comprises all cases, which the parties refer to it, and all matters specially provided for in the Charter of United Nations or in treaties and conventions in force. Also due to BA which is a bilateral treaty specifically concluded for peaceful settlement of jurisdiction, consent to submit a dispute was explicit and free.

[2.] WHETHER THE TREATMENT METED OUT WITH THE MAJOR DMITRI GODMAN IS CONTRARY TO THE PRINCIPLES OF THE INTERNATIONAL LAW?

The treatment meted out with the Godman is contrary to the principles of the international law, because the treatment to Godman violates Customary International Humanitarian Law by violating Jus Cogens norm against torture, by attacking persons who are recognized as hors de combat is prohibited and by violating bilateral and multilateral treaties, convention and Geneva convention and its additional protocol.

[3.] WHETHER MARSHAL IS BOUND TO RETURN THE POW'S?

Marshal is not bound to return the POWs because, there was an International Armed Conflict between Marshal and Aryan and Geneva Convention apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties. And there is no absolute international obligation to return POWs of International armed conflict. Also there is no substantial proof of consequential inhuman treatment meted out with POWs.

[4.] WHETHER MARSHAL IS ENTITLED TO APPROPRIATE DAMAGES?

Marshal is entitled to appropriate damages as the acts of Aryan army are attributable to Marshal as they constitute a breach of an international obligation of the State. And the acts are internationally wrongful acts because they violate Customary International Law and treaty law. Also, Aryan harmed the territorial integrity, security, and International standing, because of which Marshal seeks damages from Aryan.

[5.] WHETHER MARSHAL WAS ABSOLUTELY RIGHT IN ITS PLACE AS PER INTERNATIONAL LAW TO DENY ARYAN CONSULAR ACCESS TO MR. ALEX?

Marshal was absolutely right in its place as per international law to deny Aryan consular access to Mr. Alex because right to consular access is not an absolute right as no right can be absolute, reasonable restrictions can be made. Mr. Alex, was detained on the charges of espionage as he belonged to the Aryan secret service which is why he is a threat to Marshal.

ARGUMENTS ADVANCED

[1.] WHETHER ICJ HAS JURISDICTION OVER THE CASE?

ICJ has jurisdiction in the present dispute because [1.1] ICJ has contentious jurisdiction under art. 36(1) of ICJ statute; [1.2] ICJ will interpret and apply BA under 36(1) in the present dispute; [1.3.] Consent to submit a dispute under the BA was explicit and free; [1.4] All issues of the present dispute can be categorised as a subject matter arising out of BA; and [1.5] Aryan cannot claim Article 62 VCLT to escape jurisdiction and obligation under International law.

[1.1] ICJ HAS CONTENTIOUS JURISDICTION UNDER ART. 36(1) OF ICJ STATUTE.

The jurisdiction of the court comprises all matters specially provided for in the Charter of United Nations or in treaties and conventions in force.¹ International Court of Justice [*hereinafter* ICJ] is established with an objective to maintain international peace and security and to settle international disputes or situations which might lead to a breach of the peace.²

As Marshal and Aryan both are parties to the UN Charter³, therefore, there is a fundamental obligation on the part of the member states to settle disputes. Marshal and Aryan are party to the Bortex Agreement [*hereinafter* BA], United Nations and ICJ statute⁴, thus, establishing forum contentious. Contentious jurisdiction allows the courts to decide, in accordance with its statute and international law, legal disputes submitted to it, which is likely to endanger the maintenance of International peace and security.⁵

All state parties to ICJ statute have access to the court⁶ and all members of UN are automatically parties to the court.⁷ The contentious jurisdiction, i.e., forum contentious is established by Treaty for the purpose of this dispute. In the present dispute, jurisdiction of ICJ is treaty based.⁸ Thus, ICJ has jurisdiction in the present dispute.

¹ Statute of the International Court of Justice, (1946), 33 U.S.T.S. 993 art. 36(1) [*hereinafter* ICJ Statute].

² Charter of the United Nations (1945) [*hereinafter* UN Charter], 1 U.N.T.S. XVI, art. 1(1).

³ Moot Proposition, ¶ 20.

⁴ *Ibid.*

⁵ Chapter VI: Pacific Settlement of Disputes, Charter of the United Nations, art.35.

⁶ ICJ Statute, art. 35(1).

⁷ UN Charter, art. 93(1).

⁸ General Assembly Resolution, A/68/963, Handbook on accepting the jurisdiction of the International Court of Justice, pg. 13.

[1.2] ICJ WILL INTERPRET AND APPLY BA UNDER 36(1) IN THE PRESENT DISPUTE.

In the event of irreconcilable differences, or disputes which are of a grave nature, either party may approach the ICJ.⁹ BA is a bilateral treaty specifically concluded for peaceful settlement of jurisdiction over matters described in the scope of this agreement”.¹⁰ The task of ICJ is to respond to parallel legal disputes brought before it.¹¹ Both the state parties decided to include a compromissory jurisdictional clause conferring the jurisdiction on ICJ.¹² Jurisdictional clause in BA refers to the treaty as a whole¹³ and thus grants jurisdiction to court on matters arising directly or indirectly out of the BA.

[1.3] CONSENT TO SUBMIT A DISPUTE UNDER THE BA WAS EXPLICIT AND FREE.

The jurisdiction of the court in contentious proceedings is based on the consent of the states to which it is open.¹⁴ States may decide to include in bilateral treaties on any subject matter a clause-conferring jurisdiction on the court in respect of disputes relating to the interpretation or application of that same treaty.¹⁵ Through the compromissory clause, the States parties agree, in advance, to submit to the Court any dispute concerning the implementation and interpretation of the treaty.¹⁶ In this case, Marshal and Aryan have a bilateral agreement in between them, i.e., BA. At time, the proceedings were filed, the court had jurisdiction and will continue to have so.¹⁷

[1.4] Aryan is obliged to accept the jurisdiction of the court.

Marshal and Aryan are parties to the UN.¹⁸ According to the art. 2 para 4 of the UN Charter, ‘all members are under an obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.¹⁹ Estoppel is a general principle of international law.²⁰ Aryan's unprovoked and evident use of

⁹ BA, art.4.

¹⁰ BA, art.4.

¹¹ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, pg.236, ICJ GL No. 95.

¹² United Nations, General Assembly, *Handbook on accepting the jurisdiction of the International Court of Justice: model clauses and templates*, addressed to the Secretary-General, A/68/963 (24 July 2014), available from <http://undocs.org/A/68/963>.

¹³ *Ibid* at pg. 16.

¹⁴ Basis of Court's Jurisdiction, ICJ, available at: <http://www.icj-cij.org/en/basis-of-jurisdiction#1>.

¹⁵ HANDBOOK ON ACCEPTING THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE, pg.13, ¶ 44.

¹⁶ United Nations Conference on Trade and Development, *Course on Dispute Settlement in International Trade, Investment and Intellectual Property*, New York: United Nations, pg. 13.

¹⁷ Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, p. 168.

¹⁸ Moot Proposition, ¶ 20.

¹⁹ UN Charter, art. 2(4).

²⁰ BROWNIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 616 (6th ed. 2003).

force in the LOC contravenes the basic purpose of United Nations,²¹ i.e., to maintain International peace and security and to develop friendly relation among nations.²² Estoppel may be inferred from the conducts declaration and the like made by a state which clearly and consistently evinced acceptance.²³ In the present dispute an estoppels would arise because both the states had fully made it clear to settle the boundary dispute in the bilateral treaty.²⁴ This is not a case where estoppel or acceptance is arising out of silence.²⁵

In addition to this, consent of a state to be bound by a treaty is expressed at the signature²⁶ and established at ratification.²⁷ As soon as consent is established, treaty comes into force unless the treaty otherwise provided.²⁸ BA is in force since 1998. Every treaty in force is binding upon the parties to it and must be performed by them in good faith.²⁹ Furthermore, none of the parties have withdrawn or terminated the treaty with expressed consent.³⁰ Thus, it continues to apply and govern the present dispute.

[1.5] ALL ISSUES OF THE PRESENT DISPUTE CAN BE CATEGORISED AS SUBJECT MATTER ARISING OUT OF BA.

The subject matter or *ratione materiae* of the present dispute is covered by the BA because the factual and legal questions raised in the present dispute are defined under the constitutive instrument.³¹ Aryan claims that Marshal cannot invoke BA because LOC does not exist.³² ICJ has jurisdiction in all matters specially stipulated in treaties that are in force on the date of proceedings.³³ Art. 62 does not provide a tool for seeking the termination of a boundary.³⁴ As fundamental change of circumstances cannot be invoked when treaty establishes a boundary.³⁵ Also, subpara. 2(b) provides for a special case that a party cannot take advantage

²¹ UN Charter, art. 1(1), 1(2).

²² *Ibid.*

²³ Military and Paramilitary Activities in and against Nicaragua (Nicaragua/U.S.), Merits, 1986 I.C.J. 14.

²⁴ Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nig.), 2002 I.C.J. 303 (Order of Oct. 10), ¶ 303.

²⁵ Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Preliminary Objections, Judgment of 26 May 1961: I.C. J. Reports 1961, pg. 17.

²⁶ Vienna Convention on the Law of Treaties (1969), 1155 U.N.T.S. 331 [hereinafter VCLT], art.12.

²⁷ *Ibid* at art.14.

²⁸ *Ibid* at art.27(3).

²⁹ *Ibid* at art.26.

³⁰ *Id*, art.54.

³¹ Yuval Shany, Jurisdiction and Admissibility, pg. 729.

³² Moot proposition, ¶ 18.

³³ ICJ statute, art. 36 (1).

³⁴ Statement in Vienna by the Expert Consultant, Sir Humphrey Waldock, OR 1968 Cow 381, ¶ 31.

³⁵ VCLT 1969, art.62(2)(a).

of its own wrong.³⁶ “In the case of *Gabcikovo-Nagymaros Project (Hungary/Slovakia)* Case, court has found that both *Hungary and Czechoslovakia* failed to comply with their obligations under the 1977 Treaty, this reciprocal wrongful conduct did not bring the treaty to an end nor justify its termination.³⁷ BA will not apply, if the parties decided to terminate the treaty by mutual consent”.³⁸ In the present case, fundamental change of circumstances would not be used as the ground for terminating the treaty as the BA established the boundary, i.e., Line of Control (LOC) between Marshal and Aryan. The act of patrolling conducted by the Aryan³⁹ in the first place, was the breach of the art. 3 of the BA. Hence, the first Internationally wrongful act was committed by Aryan. Therefore, Aryan cannot terminate the agreement because it is the party at the breach.⁴⁰ Thus, article 62(2) stands and BA is still valid.

³⁶ Statement in Vienna by the Dutch Delegation, OR 1968, ¶7. See also the Chorzow Factory Case, PCIJ (1927) Series A No. 9, 31; Kolb, RBDI 33 (2000) 95.

³⁷ Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia) Judgment of 25 September 1997.

³⁸ Gabcikovo-nagymaros project (hungary/slovakia) case, Judgment p.65 ¶ 114, available from <http://www.icj-cij.org/files/case-related/92/092-19970925-jud-01-00-en.pdf>.

³⁹ Moot Preposition, ¶ 12.

⁴⁰ Jindal Steel and Power Limited v. M/S. Sap India Pvt. Ltd. (2015)

ISSUE-II

[2.] WHETHER THE TREATMENT METED OUT WITH MAJOR DMITRI GODMAN IS CONTRARY TO THE PRINCIPLES OF THE INTERNATIONAL LAW?

The treatment meted out with the Godman is contrary to the principles of the international law, because [2.1] The treatment to Godman violates Customary International Humanitarian Law; and [2.2] The treatment to Godman violates bilateral and multilateral treaties and convention.

[2.1] VIOLATION OF THE CUSTOMARY INTERNATIONAL HUMANITARIAN LAW.

Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited.⁴¹ POW's even when wounded, must be protected and may not, under any circumstances, be killed.⁴² Prohibition is grounded in a widespread International practice but Godman has been treated inhumanely⁴³, which is why there is a Violation of Customary International Humanitarian Law by the Aryan. *Delalic*⁴⁴, *Furundžija*⁴⁵ and *Kunarac* case⁴⁶ have also recognized that severe physical or mental harm cannot be inflicted on POW's because it is a violation of Customary Humanitarian Law.

[2.1.1] Violation of Jus Cogens norm against torture.

‘Every human being has the inherent right to life. Law shall protect this right. No one shall be arbitrarily deprived of his life’.⁴⁷ The right to life is a norm of *jus cogens*, as are the prohibitions against torture. *Jus cogens* refer to certain fundamental, overriding principles of international law, from which no derogation is ever permitted.⁴⁸ Prohibition on torture is part of customary international law and has become a peremptory norm.⁴⁹ In case of the

⁴¹ Customary International Humanitarian Law (2005) [hereinafter, CIHL], rule 90.

⁴² CIHL, rule 89.

⁴³ Moot Preposition, ¶ 14, ¶ 15.

⁴⁴ *Prosecutor v Delalić (Zejnil) and ors*, Appeal Judgment, Case No IT-96-21-A, ICL 96 (ICTY 2001), 20th February 2001, United Nations Security Council [UNSC]; International Criminal Tribunal for the Former Yugoslavia [ICTY]; Appeals Chamber [ICTY].

⁴⁵ *Prosecutor v Furundžija (Anto)*, Trial Judgment, Case No CIHL IT-95-17/1-T, (1999) 38 ILM 317, (2002) 21 ILR 213, [1998] ICTY 3, ICL 17 (ICTY 1998), 10th December 1998, United Nations Security Council [UNSC]; International Criminal Tribunal for the former Yugoslavia [ICTY]; Trial Chamber II [ICTY].

⁴⁶ *Prosecutor v. Dragoljub Kunarac (Trial Judgement)*, ICTY, IT-96-23-T.

⁴⁷ International Covenant on Civil and Political Rights, art. 6(1).

⁴⁸ VCLT, art. 53.

⁴⁹ Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, p.422, ¶ 99.

*Prosecutor v. Anto Furundzija*⁵⁰, the International Criminal Tribunal for the former Yugoslavia (ICTY) suggested *obiter dictum* that the violation of *jus cogens* norm, such as the prohibition against torture, had direct legal consequences for the legal character of all official domestic actions relating to the violation.⁵¹ Similarly in the present case, Godman, along with five soldiers, were tortured and then, ultimately killed and mutilated.⁵² This kind of treatment is against the principle of *Jus cogens* and hence, Aryan has violated *jus cogens* norm by treating Godman inhumanely.

[2.1.2] Godman is a person to be protected because he is no longer participating in hostilities.

Attacking persons who are recognized as hors de combat is prohibited.⁵³ A person hors de combat is who is in the power of an adverse party.⁵⁴ Persons hors de combat must be treated humanely.⁵⁵ Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely.⁵⁶ Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture shall remain prohibited.⁵⁷

[2.2] VIOLATION OF BILATERAL AND MULTILATERAL TREATIES AND CONVENTION.

Godman, along with five other soldiers, was hors de combat. They were treated inhumanely⁵⁸ by the Aryan army which is prohibited under common art. 3 of Geneva Convention.⁵⁹

⁵⁰ *Prosecutor v. Anto Furundzija* (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, available at: <http://www.refworld.org/cases,ICTY,40276a8a4.html>.

⁵¹ See Also I.D. Selderman, *Hierarchy In International Law. The Human Rights Dimension* (2001), At 58: Dupuy. 'Normes internationales penales Et Droit Imperative (*Jus Cogens*)'. In H. Ascendo (Ed.), *Droit International Penal* (2000) 80.

⁵² Moot Proposition, ¶ 15.

⁵³ CIHL, Rule 47(a); Hague Regulations, art. 23(c); Additional Protocol I, Art. 41(1) & art. 85(3)(e); ICC Statute, Art.8(2)(b) (VI).

⁵⁴ CIHL, Rule 47(a).

⁵⁵ Rule 87, CIHL; Lieber Code, Article 76 (Cited In Vol. II, Ch. 32, § 215); Brussels Declaration, Article 23, Third graph Oxford Manual, art.63; Hague Regulations, art.4, Second ¶graph; Geneva Conventions, Common art. 3; First Geneva Convention, Article 12, First ¶graph; Second Geneva Convention, art.12, First ¶graph; Third Geneva Convention, art.13; Fourth Geneva Convention, art.5 & 27, First ¶graph. Additional Protocol I, Article 75(1); Additional Protocol II, art. 4(1).

⁵⁶ Geneva Convention Common art. 3.

⁵⁷ *Ibid.*

⁵⁸ Moot Proposition, ¶ 15.

⁵⁹ *Supra* note 32.

[2.2.1] Treaty of BA violated.

“Every Treaty in force is binding upon the parties to it and must be performed by them in good faith.”⁶⁰ Aryan has failed to interpret BA in good faith and conducted patrolling operation in the demilitarized LOC which was forbidden in the Agreement⁶¹ which directly defeated the object and purpose⁶² of the BA. Firstly, that the agreement shall govern all the actions of Marshal and Aryan with respect to LOC⁶³ and to resolve all the disputes or conflicts that arise between them⁶⁴. The agreement made it mandatory to keep the LOC a demilitarized zone.⁶⁵ The parties to this Agreement shall ensure peace in the demilitarized LOC and shall not indulge in any act of aggression without a fair warning to each other.⁶⁶ No warning was ever given by Aryan before conducting patrolling operations in the LOC.

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation.⁶⁷ Therefore, Aryan has violated the BA by conducting patrolling operations in LOC.

[2.2.2] Violated ICCPR.

Art. 6 of the ICCPR recognizes and protects the right to life of all human beings.⁶⁸ It is the supreme right from which no derogation is permitted⁶⁹ even in situations of armed conflict and other public emergencies.⁷⁰ Para 1 of art. 6 of the covenant provides that no one shall be arbitrarily deprived of his life and that the right shall be protected by law.⁷¹ Deprivation of life involves a deliberate⁷² or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission.⁷³ It goes beyond injury to bodily or mental integrity or threat thereto, which are prohibited by art. 9, para 1.⁷⁴ No derogation from ‘right to life’⁷⁵ and

⁶⁰ VCLT, Art. 26.

⁶¹ BA Article 3.

⁶² Malcolm Shaw, Treaty, International Relations, www.britannica.com.

⁶³ Annexure-1, the BA of 1998, ¶1.

⁶⁴ Annexure-1-The BA of 1998 Art. 2.

⁶⁵ Moot Preposition, ¶ 5.

⁶⁶ Annexure-1-The BA of 1998, Art. 3.

⁶⁷ Chapter 3 Rd., Responsibility of States for Internationally Wrongful Acts 2001, Art. 12.

⁶⁸ ICCPR, Article 6.

⁶⁹ General Comment 6, ¶1; *See also*: Communication No. R.11/45, Suarez De Guerrero V. Colombia, Views Adopted On 31 March 1982, ¶13.1; *See also*: Communication No. 146/1983, Baboeram Adhin V Suriname, Views Adopted On 4 April 1985, ¶ 14.3.

⁷⁰ Human Rights Committee General, Comment No. 36 On Art. 6, International Covenant On Civil & Political Rights, On The Right To Life- Revised Draft By The Repertoire.

⁷¹ *Ibid* at ¶. 4.

⁷² Communication No. R.11/45, Suarez De Guerrero V. Colombia, Views Adopted On 31 March 1982, ¶ 13.2.

⁷³ *Ibid*.

⁷⁴ General Comment 35, ¶ 9.

‘right against torture’⁷⁶ even in the time of public emergency.⁷⁷ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.⁷⁸ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁷⁹ Godman was inhumanely treated and killed by the Aryan army which violated his right to life⁸⁰ and right against torture⁸¹ protected under ICCPR. Hence, Aryan has violated ICCPR.

[2.2.3] Violation of ICESCR.

‘No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom’.⁸² Aryan has tortured and killed Godman, which violated his right to life and right against torture. Hence, Aryan has violated ICESCR.

[2.2.4] Violated the Geneva Conventions and Additional protocol 1.

“The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”.⁸³ In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties.⁸⁴ ‘Prisoners of war must at all times be humanely treated.’⁸⁵ Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited and will be regarded as a serious breach of the present Convention.⁸⁶ Wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health are considered as the grave breaches Geneva conventions and additional protocol 1.⁸⁷ Mutilation is prohibited⁸⁸ and it constitutes a war crime in international armed

⁷⁵ Art.6, ICCPR.

⁷⁶ Art. 7, ICCPR.

⁷⁷ Art. 4, ICCPR.

⁷⁸ CCPR General Comment No. 20: Art. 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment).

⁷⁹ Art.7, ICCPR; Art. 5, UDHR.

⁸⁰ ICCPR, Art.6.

⁸¹ *Ibid* at Art.7

⁸² Art. 5(2), ICESCR.

⁸³ Common Article 1 of All the GC.

⁸⁴ Common Article 2(1) of All the GC.

⁸⁵ Third Geneva Convention, Art. 13.

⁸⁶ *Ibid*.

⁸⁷ First Geneva Convention, Article 50; *See also*: Second Geneva Convention, Article 51; Third Geneva Convention, Article 130; *See also*: Fourth Geneva Convention, Article 147; AP I- Article-11 & Article 85.

⁸⁸ Third Geneva Convention, Article 13; *See also*: Fourth Geneva Convention, Article 32, Additional Protocol I; Article 75(2); Additional Protocol II, Article 4(2).

conflicts under the Statute of the International Criminal Court.⁸⁹ Here, we can establish from the facts that Aryan gruesomely tortured, killed and mutilated Godman and other five captured POWs⁹⁰ which is a violation of all the Geneva Conventions and additional protocols.

[2.2.5] Violation of other important conventions.

Everyone has the right to life.⁹¹ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁹² States parties have the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life.⁹³ No one shall be arbitrarily deprived of his life.⁹⁴ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁹⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prevents torture by instructing each state party to have a systematic review on interrogation rules and methods for the treatment of persons subjected to detention.⁹⁶ Here, we can establish from the facts that Aryan gruesomely tortured, killed and mutilated Godman and other five captured POWs⁹⁷ which is prohibited under all the above mentioned human rights convention. Aryan has violated its obligations under UDHR, ACHR, ACHPR, ECHR and UNCAT.

⁸⁹ ICC Statute, Article 8(2) (B) (X) & (E) (Xi).

⁹⁰ Moot Proposition, ¶ 15.

⁹¹ UDHR, Art. 3.

⁹² UDHR, Art. 5.

⁹³ Cf. *Osman V UK*, Judgment of The ECtHR Of 28 Oct. 1998, ¶ 116

⁹⁴ American Convention on Human Rights, Art. 4; *See also:* African Charter on Human & Peoples' Rights, Art.4; European Convention on Human Rights, Art. 2.

⁹⁵ ACHR, Art. 5; *See also:* ACHPR, Art. 5; *See also:* European Convention on Human Rights; Art. 3.

⁹⁶ Convention Against Torture & Other Cruel, Inhuman Or Degrading Treatment Or Punishment, Art. 11.

⁹⁷ Moot Proposition, ¶ 15.

ISSUE-III

[3.] WHETHER MARSHAL IS BOUND TO RETURN THE PRISONERS OF WAR?

Marshal is not bound to return the POWs because [3.1] There was an International Armed Conflict between Marshal and Aryan; [3.2] There is no absolute international obligation to return POWs of International armed conflict; and [3.3] There is no substantial proof of consequential inhuman treatment meted out with POWs.

[3.1] THERE WAS AN INTERNATIONAL ARMED CONFLICT BETWEEN MARSHAL AND ARYAN.

Geneva Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.⁹⁸ In order for armed violence to qualify as international armed conflict, the hostilities should occur between two or more states as the opposing parties.⁹⁹ The comment provided by the International Committee of the Red Cross over common art. 2 of the 1949 Geneva Convention can be considered a valid one: “Any difference arising between two States and leading to the intervention of armed forces is an armed conflict”.¹⁰⁰ Marshal and Aryan are two independent and sovereign states. A war broke out between them known as Marshal- Aryan border skirmish.¹⁰¹ Hostilities have occurred between two states. Therefore, this armed conflict qualifies as an International Armed Conflict.

[3.2] THERE IS NO ABSOLUTE INTERNATIONAL OBLIGATION TO RETURN POWS OF INTERNATIONAL ARMED CONFLICT.

[3.2.1] The duty to release and return POWs under Geneva Convention relative to the Treatment of Prisoners of War.

The Third Geneva Convention and CIHL require the release and repatriation of prisoners of war without delay after the cessation of active hostilities.¹⁰² The Hague Regulations provide for the obligation to repatriate prisoners of war as soon as possible after the conclusion of

⁹⁸ Geneva Conventions Iv Of 1949, Common Article 2.

⁹⁹ 10-12-2012 Interview, Internal Conflicts Or Other Situations Of Violence – What Is The Difference For Victims? <https://www.icrc.org/eng/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm> .

¹⁰⁰ Commentary Of 1952, Convention (I) For The Amelioration Of The Condition Of The Wounded & Sick In Armed Forces In The Field. Geneva, 12 August 1949. Ihl-Databases.Icrc.Org.

¹⁰¹ Moot Proposition, ¶ 9.

¹⁰² Third Geneva Convention, Art. 118; *See also*: CIHL, Rule 128.

peace.¹⁰³ Peace agreement is an Agreement to come to peace and end conflict (between government, countries, etc.).¹⁰⁴ Active hostilities will officially end after the conclusion of peace treaty which has not been signed between the Marshal and Aryan. Practice indicates that release often occurs under an agreement at the end of a conflict based on bilateral exchange.¹⁰⁵ Aryan has already killed the six captured POWs of the Marshal¹⁰⁶. Hence, no bilateral exchange can possibly happen and repatriation of POWs is restricted by National law of the Marshal. Thus, Marshal is not bound to return the POWs.

[3.3] THERE IS NO SUBSTANTIAL PROOF OF CONSEQUENTIAL INHUMAN TREATMENT METED OUT WITH POWS.

In the cases, *The Prosecutor v. Mathieu Ngudjolo Chui*, *The Prosecutor v. Callixte Mbarushimana* and in *Prithipal Singh and Others v. State of Punjab And Another*, the accused were acquitted giving the benefit of doubt as the other party failed to adduce any “substantial evidence”. Similarly, in the present Aryan’s failed to prove that consequential inhuman treatment was meted out with the POWs of Aryan.

[3.3.1]. Marshal actions were necessary.

Necessity may not be invoked unless the act is the only way for the State to safeguard an essential interest against a grave and imminent peril.¹⁰⁷ In *Caroline case* of 1842, it was argued that, there must be shown "a necessity of self-defence. . . instant, overwhelming, leaving no choice of means, and no moment for deliberation."¹⁰⁸ It also confirmed that ‘the only legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy’.¹⁰⁹ It was necessary and in the interest of the Marshal to capture POWs to immediately end the hostilities and to weaken the military forces of Aryan.

¹⁰³ Hague Regulations, Art. 20.

¹⁰⁴ Definition In Collins Dictionary.

¹⁰⁵ E.G., Agreement On The Military Aspects Of The Peace Settlement Annexed To The Dayton Accords, Article 9; *See also*: Agreement Between Croatia & The Socialist Federal Republic Of Yugoslavia On The Exchange Of Prisoners, 1-2; *See also*: Protocol To The Moscow Agreement On A Cease-Fire In Chechnya, Art; *See also*: Ashgabat Protocol On Prisoner Exchange In Tajikistan, 1.

¹⁰⁶ Moot Proposition, ¶ 14.

¹⁰⁷ Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001, Art. 25(A).

¹⁰⁸ *Caroline Case* of 1842,

¹⁰⁹ St. Petersburg Declaration of 1868.

[3.3.2] Marshal actions were proportionate.

The principle of proportionality focuses, therefore, on the relationship between the objective whose achievement is being attempted, and the means used to achieve it.¹¹⁰ In the present case, detaining 47000 POWs are the best proportionate step to restrain the activities of Aryan strictly.

[3.3.3] Marshal actions qualify as self-defence.

The terms "anticipatory self-defence", "pre-emptive self-defence" and "pre-emption" traditionally refers to a state's right to strike first in self-defence when faced with imminent attack.¹¹¹ In order to justify such an action, the *Caroline* test¹¹² has two distinct requirements: the use of force must be necessary because the threat is imminent and thus pursuing peaceful alternatives is not an option (necessity); the response must be proportionate to the threat (proportionality).¹¹³

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.¹¹⁴ Nothing 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.¹¹⁵ Under Article 51 of the UN Charter and under CIL – self-defence is only available against a use of force that amounts to an armed attack (Para 211).¹¹⁶

Since, the POWs were captured as a measure of self-defence. Hence, the actions of Marshal qualify as self-defence.

[3.3.4] POWs kept in custody are preventive measure to avoid an armed conflict.

The most basic, and in principle, least controversial purpose for holding Prisoners of War in continuing custody is to prevent them from re-joining their comrades-in-arms.¹¹⁷ Releasing

¹¹⁰ Beit Sourik Village Council V. The Government of Israel, HCJ 2056/04, pg. 24, ¶ 40.

¹¹¹ Charles Pierson (2004). "Pre-Emptive Self-Défense In An Age Of Weapons Of Mass Destruction: Operation Iraqi Freedom". *Denver Journal Of International Law & Policy*. University Of Denver.

¹¹² Charlotta Nilsson, The Legality of Anticipatory Self-Defence in International Law.

¹¹³ The Legal War: A Justification For Military Action In Iraq, *Gonzaga Journal Of International Law*, Archived From The Original On 2010-01-16.

¹¹⁴ Draft Articles on Responsibility Of States For Internationally Wrongful Acts 2001, Art. 25.

¹¹⁵ UN Charter, Art. 51.

¹¹⁶ Nicaragua v. United States Of America - Military & military Activities In & Against Nicaragua - Judgment Of 27 June 1986 - Merits - Judgments [1986] ICJ 1; ICJ Reports 1986, P 14; [1986] ICJ Rep 14 (27 June 1986).

¹¹⁷ Convention Relative to The Treatment of Prisoners Of War. Geneva, 27 July 1929.

and repatriating Prisoners of War who are still capable of serving before the end of hostilities might strengthen the enemy by increasing its numbers and prolong the duration of the war.¹¹⁸

The Aryan sent the parcel to the Marshal of the mutilated body parts of all the soldiers captured by them with an enclosed letter containing two lines as follows '*Be prepared, we are going to hit you soon*'.¹¹⁹ From the above facts, it can be established that, if POWs are repatriated to Aryan, then Aryan can seek revenge by attacking Marshal's again. Therefore, keeping POWs in the permanent captivity would be preventive measure to avoid another armed conflict.

¹¹⁸ *Ibid.*

¹¹⁹ Moot Proposition, ¶ 14.

ISSUE-IV

[4.] MARSHAL IS ENTITLED TO APPROPRIATE DAMAGES?

Marshal is entitled to appropriate damages because, [4.1] Acts of Aryan army are attributable to Marshal. [4.2] Acts are internationally wrongful acts because they Violate of Customary International Law and Violate treaty law.

[4.1] ACT OF ARYAN ARMY ARE ATTRIBUTABLE TO MARSHAL.

There is an internationally wrongful act of a State when conduct consisting of an action or omission is attributable to the State under international law and constitutes a breach of an international obligation of the State.¹²⁰ The condition for the existence of an internationally wrongful act of the State is that the conduct attributable to the State should constitute a breach of an international obligation of that State¹²¹.

Sometimes an act can be attributed the state if it knew or must have known.¹²² States can only act by and through their agents.¹²³ Thus the question is which persons should be considered as acting on behalf of the state. In the “Rainbow Warrior” case,¹²⁴ the arbitral tribunal stressed, “any violation by a State of any obligation, of whatever origin, gives rise to State responsibility”.¹²⁵ If the legal acts in question are imputable to state, they are regarded as acts attributed to state.¹²⁶ In the present case, acts of taking POW’s, killing soldiers, torturing them¹²⁷ and denial of consular access¹²⁸ are all internationally wrongful act which can be attributed to Aryan.

Aryan failed to fulfil the obligations under the BA, therefore giving rise to the state responsibility. Since Aryan has killed six soldiers of Marshal without any legal proceedings and without any intimation, Aryan is subjected to pay the damages which are to be calculated

¹²⁰ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, Art.2

¹²¹ Article 2(7) of Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001.

¹²² Corfu Channel, United Kingdom v. Albania, Judgment, Compensation, (1949) ICJ Rep 244, ICGJ 201 (ICJ 1949), 15th December 1949.

¹²³ German Settlers in Pol &, Advisory opinion, 1923, PCIJ.

¹²⁴ 6 Cases Concerning The Difference Between New Zeal & France Concerning The Interpretation Or Application Of Two Agreements Concluded On 9 July 1986 Between The Two States & Which Related To The Problems Arising From The Rainbow Warrior Affair, UNRIAA, Vol. XX (Sales No. E/F.93.V.3), P. 215 (1990).

¹²⁵ *Ibid* at page 251, ¶ 75.

¹²⁶ U.S Diplomatic & consular staff in Tehran case & Dickson Car Wheel Company Case.

¹²⁷ Moot proposition, ¶ 15.

¹²⁸ Moot Proposition, ¶ 13.

based on settled conventions under International law with respect to the loss suffered by Marshal.

[4.2] ACTS ARE INTERNATIONALLY WRONGFUL ACT.

Article 1 states the basic principle underlying the articles as a whole, which is that a breach of international law by a state entails its international responsibility. An internationally wrongful act of a state may consist in one or more actions or omissions or a combination of both. Whether there has been an internationally wrongful act depends, first, on the requirements of the obligation which is said to have been breached and, secondly, on the framework conditions for such an act, which are set out in part one. The term “International responsibility” covers the new legal relations which arise under international law by reason of the internationally wrongful act of a state. The content of these new legal relations is specified in part two.¹²⁹

Every internationally wrongful act of a state entails the international responsibility of that state¹³⁰. In the phosphates in morocco case, PCIJ affirmed that when a state commits an internationally wrongful act against another state international responsibility is established “immediately as between the two states¹³¹. ICJ has applied the principle on several occasions, for example in the Corfu channel case¹³², in the military and paramilitary activities in and against Nicaragua case¹³³ and in the gabčíkovo-nagymaros project case¹³⁴.

It is also stated that and on the interpretation of peace treaties (second phase)¹³⁵, in which it stated that “refusal to fulfil a treaty obligation involves international responsibility”¹³⁶ arbitral tribunals have repeatedly affirmed the principle, for example in the claims of Italian nationals resident in Peru cases¹³⁷ in the Dickson car wheel company case,¹³⁸ in the international

¹²⁹ Article 1 of Draft article on responsibility of state for internationally wrongful acts, with commentaries 2001.

¹³⁰ Draft article on responsibility of state for internationally wrongful acts, with commentaries 2001.

¹³¹ Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74; *See also*: S.S. “Wimbledon”, 1923, P.C.I.J., Series A, No. 1, p. 15, at p. 30; *See also*: Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; *See also*: Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29.

¹³² Corfu Channel, Merits, Judgment, I.C.J. Reports 1949, p. 4, at p. 23.

¹³³ Military & Paramilitary Activities in & against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14, at p. 142, ¶. 283, & p. 149, ¶. 292.

¹³⁴ Gabčíkovo-Nagymaros Project (see footnote 27 above), at p. 38, ¶. 47.

¹³⁵ Interpretation of Peace Treaties with Bulgaria, Hungary & Romania, Second Phase, Advisory Opinion, I.C.J. Reports 1950, p. 221.

¹³⁶ Article 1 Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001.

¹³⁷ Seven of these awards rendered in 1901 reiterated that “a universally recognized principle of international law states that the State is responsible for the violations of the law of nations committed by its agents”

fisheries company case¹³⁹ in the British claims in the Spanish zone of morocco case¹⁴⁰ and in the Armstrong cork company case.¹⁴¹ In the “Rainbow Warrior” case,¹⁴² the arbitral tribunal stressed “any violation by a State of any obligation, of whatever origin, gives rise to State responsibility”¹⁴³

Thus the term “international responsibility” in article 1 covers the relations which arise under international law from the internationally wrongful act of a State, whether such relations are limited to the wrongdoing State and one injured State or whether they extend also to other States or indeed to other subjects of international law, and whether they are centred on obligations of restitution or compensation or also give the injured State the possibility of responding by way of countermeasures.¹⁴⁴

[4.2.1] Violation of Customary International Law

a. International wrongful act under the Geneva Conventions. Prisoners of war must at all times be humanely treated.¹⁴⁵ “Cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment” of civilians, are prohibited.¹⁴⁶ Torture and cruel treatment are also prohibited by specific provisions of the four Geneva Conventions.¹⁴⁷ In addition, “torture or inhuman treatment” and “wilfully causing great suffering or serious injury to body or health” constitute grave breaches of the Geneva Conventions and are war crimes under the Statute of the International

(UNRIAA, vol. XV (Sales No. 66.V.3), pp. 399 (Chiessa claim), 401 (Sessarego claim), 404 (Sanguinetti claim), 407 (Vercelli claim), 408 (Queirolo claim), 409 (Roggero claim), & 411 (Miglia claim)).

¹³⁸ Dickson Car Wheel Company (U.S.A.) v. United Mexican States, UNRIAA, vol. IV (Sales No. 1951.V.1), p. 669, at p. 678 (1931).

¹³⁹ International Fisheries Company (U.S.A.) v. United Mexican States, *Ibid* at p. 691, at p. 701 (1931).

¹⁴⁰ According to the arbitrator, Max Huber, it is an indisputable principle that “responsibility is the necessary corollary of rights; *See also*: All international rights entail international responsibility”, UNRIAA, vol. II (Sales No. 1949.V.1), p. 615, at p. 641 (1925).

¹⁴¹ According to the Italian-United States Conciliation Commission, no State may “escape the responsibility arising out of the exercise of an illicit action from the viewpoint of the general principles of international law”, UNRIAA, vol. XIV (Sales No. 65.V.4), p. 159, at p. 163 (1953).

¹⁴² 6 Case concerning the difference between New Zealand & France concerning the interpretation or application of two agreements concluded on 9 July 1986 between the two States & which related to the problems arising from the Rainbow Warrior affair, UNRIAA, vol. XX (Sales No. E/F.93.V.3), p. 215 (1990).

¹⁴³ *Ibid* at p. 251, ¶. 75

¹⁴⁴ Article 1 (5) of Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001.

¹⁴⁵ Third Geneva Convention, Art 13.

¹⁴⁶ Geneva Conventions, Common Article 3

¹⁴⁷ First Geneva Convention, Article 12, (“Torture”); *See also*: Second Geneva Convention, Article 12, (“Torture”); *See also*: Third Geneva Convention, Article 17, (“Physical Or Mental Torture”) Article 87, (“Torture Or Cruelty”) & Article 89 (“Inhuman, Brutal Or Dangerous” Disciplinary Punishment); *See also*: Fourth Geneva Convention, Article 32 (“Torture” & “Other Measures Of Brutality”).

Criminal Court.¹⁴⁸ There were evidences of gruesome torture of soldiers, committed by Aryan, including mutilation, permanently disabling or removing an organ and endangering mental and physical health.¹⁴⁹ From the above facts, we can establish that Aryan has violated all the Geneva Conventions and hence, should compensate for the same.

- b. International wrongful acts under International Covenant on Civil and Political Rights.** Every human being has the inherent right to life.¹⁵⁰ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁵¹ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.¹⁵² pows' survival and well-being considered as the principal objective of humanitarian rule.¹⁵³ Aryan has treated Godman, along with five other soldiers, inhumanely and ultimately killed them. Godman right to life and right against the torture has been violated.

[4.2.2] Violation of Treaty Law.

As per stated in the Article 3, "The parties to this Agreement shall ensure peace in the demilitarized LOC and shall not indulge in any act of aggression without a fair warning to each other".¹⁵⁴ It is prohibited for the Parties to the conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone.¹⁵⁵ Aryan army has conducted patrolling operations in the LOC¹⁵⁶ even when it is forbidden under BA and AP 1. From the above facts it can be established that the Applicant should compensate to Respondent as it violated the BA and Additional Protocol 1.

[4.3] MONITORY LOSS

War has serious economic costs – loss of buildings, infrastructure, a decline in the working population, uncertainty, rise in debt and disruption to normal economic activity.¹⁵⁷ There has

¹⁴⁸ First Geneva Convention, Article 50; Third Geneva Convention, Article 130; Fourth Geneva Convention, Article 147; ICC Statute, Article 8(2)(A)(II) & (III) & (C)(I)

¹⁴⁹ Moot Proposition, ¶ 15

¹⁵⁰ International Covenant On Civil & Political Rights, Article 6

¹⁵¹ International Covenant On Civil & Political Rights, Article 7.

¹⁵² International Covenant On Civil & Political Rights, Article 10.

¹⁵³ Eritrea v. Ethiopia, Judgement.

¹⁵⁴ BA, Article 3.

¹⁵⁵ AP 1, Art. 60.

¹⁵⁶ Moot Proposition, ¶ 9.

¹⁵⁷ Tejvan pettinger, *Economic Impact Of War*, (March 31, 2017), www.economicshelp.org

been a huge monetary loss, the money invested on arms and ammunition.¹⁵⁸ When people become misplaced, they cannot continue to work or keep their businesses open, causing damages to the economy of countries involved.¹⁵⁹ In addition, moral injury¹⁶⁰ suffered by the victim and their families for which Marshal is asking for pecuniary compensation. The widespread trauma caused by these atrocities and suffering of the civilian population is another legacy of these conflicts, the following creates extensive emotional and psychological stress¹⁶¹

[4.4] HARM TO THE TERRITORIAL INTEGRITY, SECURITY, AND INTERNATIONAL STANDING

The internal disturbance in the law and order of because of the full-fledged war within the territory known as Aryan border skirmish which lasted from 20th October 2017 to 25 December 2017.¹⁶² The citizens had to suffer. The fog of war Chaos and confusion, present during war and other forms of armed conflict, made it difficult to obtain accurate information on the resulting population health consequences. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.¹⁶³ In *Eritrea v. Ethiopia case* the commission awarded compensation for mental and emotional harm suffered by prisoners of war¹⁶⁴

Marshal demands that all such actions must be ceased and that Aryan has an obligation to pay reparations to the government for damage to their people, property, and economy.

¹⁵⁸ Moot Proposition, ¶ 5

¹⁵⁹ "The Economic Costs of Violence & Containment." The Institute For Economics & Peace

¹⁶⁰ Article 36, ILC Articles on State Responsibility, Op. Cit. (Note 1).

¹⁶¹ Impact Of Armed Conflict On Children". *United Nations Report*. New York. 1996.

¹⁶² Moot Proposition, ¶ 9

¹⁶³ Responsibility of States For Internationally Wrongful Acts, Art. 36.

¹⁶⁴ Eritrea's Damages Claims, *Supra* Note 23, At 230, 238.

ISSUE-V

[5.] Whether Marshal is right in its place as per international law to deny Aryan consular access to Mr. Alex?

Marshal is right in its place as per international law to deny Aryan consular access to Mr. Alex because [1.] Right to consular access should be in conformity with the laws and rules of receiving State [2.] VCCR does not apply to espionage, [3.] Denial of Treaty Rights in Criminal Cases, [4.] Threat to sovereignty and National Security, [5.] Alex right to consular access is restricted by GC III and AP I.

[5.1] RIGHT TO CONSULAR ACCESS SHOULD BE IN CONFORMITY WITH THE LAWS AND RULES OF RECEIVING STATE.

Article 36(2) of the Vienna Convention provides that the right to consular access shall be exercised in conformity with the laws and regulations of the receiving State.¹⁶⁵ In the context of a foreign national in detention, the relevant laws and regulations contemplated by Article 36(2)¹⁶⁶ are those that may affect the exercise of specific rights under Article 36(1), of Vienna convention on consular relation¹⁶⁷. Thus, visits to persons in custody or imprisoned 'are permissible in conformity with the provisions of the code of criminal procedure and prison regulations.'¹⁶⁸

Accordingly, in many cases it may be difficult to say with any certainty whether, if contested, a given treaty would be held under national law to fall within an internal limitation, or whether an international tribunal would hold the internal provision to be one that is "notorious" and "clear" for the purposes of international law.¹⁶⁹

There is no suggestion whatever that any State Party thought that the proviso in Article 36(2) in any way required remedies in the criminal justice process for failures to inform detained foreign nationals that they could request consular assistance,¹⁷⁰ In the instant case, Marshal

¹⁶⁵ Counter memorial submitted by the United State of America (LaGrand case) ¶ 79(2).

¹⁶⁶ Vienna convention on consular relation art. 36, cl. 2.

¹⁶⁷ Counter memorial submitted by the United State of America (LaGrand case) ¶79(2).

¹⁶⁸ Draft Articles on Consular Relations, with commentaries 1961, article 36, ¶(5).

¹⁶⁹ Draft Articles On the Law of Treaties With Commentaries 1966 Article (43).

¹⁷⁰ Counter memorial submitted by the United State of America (LaGrand case) ¶80(3).

has applied domestic laws in particular the rule of “procedural default”¹⁷¹, the effect of which is that no remedy is immediately available to Mr. Alex.

[5.2] VCCR DOES NOT APPLY TO ESPIONAGE.

Vienna convention on consular relation is unlikely to apply in the context of a spy/terrorist sent by a State to engage in acts of terror.¹⁷² Espionage consists of activities of spies. A spy is any person who, acting clandestinely¹⁷³ or on false pretences obtains or endeavors to obtain information of military value in territory controlled by the enemy, with the intention of communicating it to the opposing Party.¹⁷⁴ However, the definition of espionage is not limited to members of the armed forces. It also includes civilian who engage in act of espionage¹⁷⁵.

If an individual is accused of espionage, terrorism, consular access which may involve compromising evidence which may involve exacerbating the threat for the receiving State because of coded communication, cannot possibly be anything other than a breach of Article 55,¹⁷⁶ which states that Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State.¹⁷⁷ In the present case it is mentioned that marshal agreed to release the civilians except one namely Mr. Alex, whom they detained on the charges of espionage as he belonged to the Aryan secret service¹⁷⁸.

Pakistan has argued in the *Jadhav case* that, Article 36 of the Vienna Convention does not apply to persons suspected of espionage or terrorism.¹⁷⁹ Therefore, from the above fact, Mr. Alex should not be granted consular access because he was espionage of the Aryan¹⁸⁰, and granting consular access to Mr. Alex would only further endanger their nation¹⁸¹ and hence detention is necessary.

¹⁷¹ LaGrand Case (Germany V. United States Of America) Counter-Memorial Submitted By The United States Of America 27 March 2000 ¶53.

¹⁷² Verbatim record of Pakistan, India vs. Pakistan (Jadhav case), pg.19 ¶1.

¹⁷³ CIHL rule 107.

¹⁷⁴ (Article 29 of the 1907 Hague Regulations, CIHL rule 107) HPCR Manual on International Law Applicable to Air and Missile Warfare | Section R: Espionage(general rule 118).

¹⁷⁵ (HPCR manual on international law applicable to air and missile warfare, 2013), general rule 118.

¹⁷⁶ Verbatim record (India vs. Pakistan) Jadhav case page no.21.

¹⁷⁷ VCCR, art.55, Cl. 1.

¹⁷⁸ Moot preposition ¶ 12.

¹⁷⁹ India v. Pakistan (Jhadhav Case), ¶43.

¹⁸⁰ Moot Proposition, ¶.12.

¹⁸¹ Moot Proposition ¶.13.

[5.3] DENIAL OF TREATY RIGHTS IN CRIMINAL CASES.

Article 36 of the Vienna Convention does not create a binding obligation on a state for providing consular access to foreign nationals arrested on criminal charges. In fact, the following paragraph of the said Convention, Article 36 (2) makes it abundantly clear that this right “shall be exercised in conformity with the laws and regulations of the receiving State.”¹⁸² (Substantiate with Avena , LaGranda case and other US cases). The VCCR did not require states to provide remedies in their respective criminal justice systems when foreign nationals were not informed of their consular notification rights¹⁸³

[5.4] THREAT TO SOVEREIGNTY AND NATIONAL SECURITY.

Espionage and gathering intelligence methods violate certain International Law treaties concerning Human Rights, such as right to privacy and principles set by international law on non-interference in internal affairs of another state.¹⁸⁴ In international law, the principle of non-intervention includes, but is not limited to, the prohibition of the threat or use of force against the territorial integrity or political independence of any state.¹⁸⁵

Several jurists have recognized that certain acts not involving force nonetheless constitute intervention. Quincy Wright was of the opinion that "espionage into official secrets; and other acts within a state's territory forbidden by its laws" may constitute acts of illegal intervention.¹⁸⁶ As the International Court of Justice said in its 1986 judgment in the Nicaragua case, "the principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law. International law requires political integrity [...] to be respected"¹⁸⁷ It went on to say that "the principle forbids all States or groups of States to intervene directly or indirectly in the internal or external affairs of other States" and that "a prohibited intervention must accordingly be one bearing on matters in which each

¹⁸² Draft article on consular access 1961 art. 36 (5)

¹⁸³ Lagrand case Verbatim Record 2000/28 and Verbatim Record 2000/28-Translation, paragraph 3.1, Nov. 13, 2000 (visited Nov. 22, 2000) <http://www.icj-cij.org/ligicjwww/idocket/igus/iguscrligus-cr2000-28.html> (Nov. 14, 2000) [hereinafter Record 28]

¹⁸⁴ A. John Radsan, The Unresolved Equation of Espionage and International Law, Michigan Journal of International Law, Volume 28/Issue 3. Available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1170&context=mjil>.

¹⁸⁵ U.N Charter, Art. 2 Cl. 4

¹⁸⁶ Quincy Wright, Julius Stone, Richard A. Falk, Roland J. Stanger, Essays on Espionage and International Law. Available at, <https://www.questia.com/library/61631755/essays-on-espionage-and-international-law>.

¹⁸⁷ Nicaragua case (ICJ Reports 1986, p.106, para. 202).

State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy.¹⁸⁸ Therefore, Marshal has a right to deny consular access to Mr. Alex as he is a threat to the country and permitting consular access would only endanger nation security¹⁸⁹.

[5.5] MR. ALEX RIGHT TO CONSULAR ACCESS IS RESTRICTED BY GC III AND AP I.

Under international law, the act of spying, or espionage, describes as an act of information gathering that is clandestine or takes place under false pretenses. A spy¹⁹⁰ caught in the act is assimilated into the category of saboteur and cannot benefit from the status of prisoner of war¹⁹¹. The spy must nevertheless be treated with humanity and must not be punished without a fair and regular trial.¹⁹² Customary international humanitarian law prescribes that in the context of an international armed conflict, combatants who are captured while engaged in espionage do not have the right to prisoner-of-war status. They may not be convicted or sentenced without previous trial.¹⁹³ So, In the instant case Marshal agree to release the civilians except one namely Mr. Alex, whom they claimed was being detained on the charges of espionage as he belonged to Aryan secrete survive.¹⁹⁴

¹⁸⁸ Michael Woods, Non-Intervention (Non-interference in domestic affairs). Available at, <https://pesd.princeton.edu/?q=node/258>.

¹⁸⁹ Moot preposition paragraph(13).

¹⁹⁰ Hague Regulations 1907, Art. 29; CIHL rule 107.

¹⁹¹ Additional Protocol (I) to the Geneva Conventions, 1977, Art. 46, Cl. 3.

¹⁹² Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Art. 5 paragraph 3

¹⁹³ ICRC customary IHL study 2005, Rule 107.

¹⁹⁴ Moot preposition, ¶ 12.

PRAYER FOR RELIEF

For the foregoing reasons, Marshal respectfully requests this Court to declare that:

- The ICJ have the jurisdiction to determine the matter.
- The treatment meted out with the Major Dmitri Godman is contrary to the principles of International Law.
- The unprovoked act on LOC demanded a strict action to be taken from Marshal's end.
- Marshalis entitled to appropriate damages from the Aryan.
- Marshal was right to deny Aryan the Consular Access to Mr. Alex.

Respectfully Submitted,
Agents for the Marshal.