

TEAM CODE: 1537

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

Case Concerning Border Skirmish

**THE STATE OF MARSHAL
APPLICANT**

v.

**THE STATE OF ARYAN
RESPONDENT**

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

MEMORIAL FOR THE APPLICANT

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ABBREVIATIONS

&	And
¶	Paragraph
AJIL	American Journal of International Law
Art.	Article
CTS	Consolidated Treaty Series
Doc.	Document
DRC	Democratic Republic of Congo
ed.	Edition
ECHR	European Court of Human Rights
EHRR	European Human Rights Report
GA	General Assembly
GAOR	General Assembly Official Records
i.e.	That is
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICGJ	International Courts of General Jurisdiction.
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
IHL	International Humanitarian Law
ILC	International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
LNTS	League of Nations Treaty Series
LOC	Line of Control
Nicar.	Nicaragua
p.	Page
POW(s)	Prisoner(s) of War
Rep.	Report
Res.	Resolution
RIAA	Reports of International Arbitral Awards

ser.	Series
Sess.	Session
Supp.	Supplement
T.S	Treaty Series
UN	United Nations
UDHR	Universal Declaration of Human Rights
U.N.T.S	United Nations Treaty Series
USA	United States of America
v.	versus
VCLT	Vienna Convention on Law of Treaties

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STATEMENT OF JURISDICTION

The parties have approached this Hon'ble Court under **Article 36 paragraph 1** of **Statute of International Court of Justice**¹. Article 36 paragraph 1 talks of a situation where a matter has been specially provided for in the treaties. In this situation also, **Article 4 of the Bortex Agreement, 1998** provides for jurisdiction of International Court of Justice in event of irreconcilable differences or disputes which are of a grave nature.²

¹ Statute of the International Court of Justice art. 36(1) June 26, 1945, (hereinafter ICJ Statute).

² See Moot Proposition, Annexure-1.

QUESTIONS PRESENTED

- I. Whether the application filed before the International Court of Justice is maintainable?
- II. Whether the State of Marshal has Right of Self-defence with respect to POWs and Alex?
- III. Whether the acts of State of Aryan are in violation of International Humanitarian Law?
- IV. Whether the State of Aryan is liable to pay damages?

STATEMENT OF FACTS

BACKGROUND

Marshal is a landlocked country located in the African continent, Assura being its capital. Christianity is the dominant religion practiced there. Globally, Marshal has been able to achieve high level of growth, prosperity as well as high standards of living. Geographically, Marshal is bordered by Aryan, Castle and Lager; all the countries being Islamic nations are democratic and have never witnessed a military coup. Marshal is a dictator-ruled State. It gained independence from the British rule in 1972. General Vadim, who was formerly a part of British army, suspended the newly proclaimed constitution and assumed power in 1975. Since independence, Marshal has witnessed four wars with the neighbouring states, primarily on the basis of religion. But through its military expertise, Marshal has always managed to defeat its enemies who have always tried to gain supremacy over it. The Republic of Dominia another Christian dominated superpower in the continent has always been at support for Marshal.

LOC AND THE PATROLLING OPERATIONS

A new border line, known as the Line of Control (LOC), was demarcated between Marshal and Aryan through the Bortex Agreement of 1998. The agreement made it mandatory for the LOC to be a demilitarized zone. On the 15th of October 2017, Patrolling operations in the LOC, by the Aryan army were noticed by Major Dmitri Godman who was the in charge of Alpha unit guarding a Marshal Border outpost. These operations were not well received and were condemned by the International community. Major Godman along with five other members of his group went on to ward off the infiltration attempt by the Aryan army but being outnumbered, were captured as they ran out of ammunition.

THE MARSHAL-ARYAN BORDER SKIRMISH

The activities by the State of Aryan led to large scale military operations by the State of Marshal in the LOC resulting in the Marshal-Aryan border skirmish which lasted from 20th October 2017 to 25th December 2017. The State of Aryan was brutally crushed and Marshal

emerged victorious. The war saw Marshal annexing the LOC, capturing approximately 47,000 Prisoners of War, 100 Civilians and lastly, the Aryan government was deposed and martial law was imposed with the army taking over the reins of the Government.

PRISONERS OF WAR AND ALEX

The Aryan government asked the State of Marshal to revert back the POWs as well as the civilians in return of Major Godman and the five soldiers, the only POWs captured by the State of Aryan. The State of Marshal agreed to return the civilians but was unwilling to return the POWs and one civilian that is Mr Alex, who was being detained on the charges of espionage as he belonged to the Aryan Secret Services. The request for providing consular access to Mr Alex was denied on the ground of exposing the nation towards a greater threat. In the words of General Vadim at the 73rd Session of United Nations General Assembly, ***“Every time, we have to tolerate their rubbish. This time, we will make them pay for their sins...”***

PARCEL AT THE MARSHAL OUTPOST

The Marshal Border outpost on the 2nd of February 2018 received a parcel containing the mutilated body parts of all the soldiers with Major Godman's name tag appearing on the top. There was an enclosed letter in the parcel which read, ***“Be prepared, we are going to hit you soon.”*** There was a situation of turmoil within the State of Marshal and a detailed account of the brutalities by the Aryan army was publicized. The soldiers were first shot dead and then the brutalities were committed. There was explicit evidence of the torture on soldiers endangering their mental and physical health.

APPLICATION TO THE COURT

General Vadim thus made a declaration to invoke Article 4 of the Bortex agreement which gives rise to the jurisdiction of the International Court of Justice under Article 36(1) of the ICJ statute. Both the states are parties to the following conventions; UDHR, ICCPR, ICESCR, all the Geneva Conventions, the UN Charter, Vienna Convention on the Law of Treaties and the ICJ Statute.

SUMMARY OF ARGUMENTS

I. WHETHER THE APPLICATION FILED BEFORE THE INTERNATIONAL COURT OF JUSTICE IS MAINTAINABLE?

The counsel pleads that the application is maintainable before the International Court of Justice as directed under Art 4 of the Bortex agreement which is valid. The State of Aryan breached its treaty obligations and made unjustified use of force which resulted in the Marshal-Aryan Border skirmish. The LOC still exists and the treaty cannot be interpreted in order to escape liability of one's own wrongful conduct. Also, the State of Aryan has lost its Right to invalidate or suspend the treaty as the treaty establishes a boundary and the fundamental change of circumstances that have occurred is the result of breach of treaty obligations on their part.

II. WHETHER THE STATE OF MARSHAL HAS RIGHT TO SELF-DEFENCE WITH RESPECT TO POWs AND ALEX?

It is humbly pleaded that the State of Marshal has the Right of Self Defence. It is not bound to return the Prisoners of War as repeated attempts at negotiations have failed, the State of Aryan has turned hostile and in terms of emergency, derogable rights like right to liberty can be infringed as to protect one's own country from an imminent threat. Secondly, espionage is considered illegal since it violates international laws and conventions and is also envisaged in the UN Charter. Mr Alex too was arrested as a spy and so he forfeits the right to be governed by the fourth Geneva Convention. Thus, Marshal is neither obliged to return the POWs nor to provide consular access to Mr Alex.

III. WHETHER THE STATE OF ARYAN HAS VIOLATED INTERNATIONAL HUMANITRIAN LAW?

It is humbly pleaded that Aryan has violated the international humanitarian law by breaking the code of conduct during war thus breaching the Geneva conventions and its Additional Protocol. The treaties signed by Aryan i.e. UDHR, ICCPR and ICESCR which form a part of Customary International Law were violated by the ill treatment and torture of the captured POWs. Without any trial being conducted against them, they were murdered and then their bodies were mutilated. This is against the accepted norms of International Humanitarian law which makes Aryan liable for all such breach of laws of war.

IV. WHETHER THE STATE OF ARYAN IS LIABLE TO PAY DAMAGES?

The State of Aryan has been involved in acts of grave violation of International Humanitarian Law. The mutilation of the six soldiers of Alpha Unit captured by the Aryan army makes it obligatory for the State of Aryan to pay damages because Art. 3 of Hague Convention - which is a part of Customary International Law – imposes responsibility on State for acts of the Army. Art 12 of ILC Articles on State Responsibility for Wrongful Acts, 2001 further affirms this responsibility of the State. The State is under an obligation to pay compensation for the acts of the Aryan army since restitution isn't possible under the given circumstances. The amount of compensation to be given is to be decided by the Court keeping in mind that even moral damages should be compensated.

ARGUMENTS ADVANCED

I. THAT THE APPLICATION FILED BEFORE THE INTERNATIONAL COURT OF JUSTICE IS MAINTAINABLE.

[A] THAT THE CONSENT HAS BEEN GIVEN BY BOTH THE PARTIES THROUGH BORTEX AGREEMENT OF 1998.

1. This Court can exercise jurisdiction over “the existence of any fact which, if established, would constitute a breach of an international obligation.”³ The counsel humbly submits that the parties to this case are signatories of the UN Charter⁴ which makes them a member of the United Nations⁵. **Art 93 paragraph 1 of the UN Charter**⁶ states that all members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice. Hence, the applicant is a party to the Statute of International Court of Justice.
2. **Art 35 paragraph 1 of the statute of International Court of Justice** provides that the court shall be open to the parties of the statute. **Art 36 paragraph 1 of the Statute of the International Court of Justice**⁷ states that the jurisdiction of this court comprises of all the cases that the parties refer to it and all the matters specially provided in the charter of United Nations or in treaties and conventions in force.
3. The parties to this case agreed through Bortex Agreement of 1998⁸ to approach the court in case of disputes regarding LOC. **Art 4 of the Bortex Agreement of 1998**⁹ states that in the event of irreconcilable differences, or disputes which are of grave nature, either party may approach the ICJ. The ICJ shall have sole jurisdiction over matters described in the scope of this agreement. Hence, there is a jurisdiction of the ICJ as being a matter

³ ICJ Statute, *supra* note 1, Art.36(2)(c).

⁴ See Moot Proposition, ¶ 20.

⁵ United Nations Charter art. 3, June 26, 1945, T.S. No. 993 (hereinafter UN Charter).

⁶ *ibid*, Art 93.

⁷ ICJ Statute, *supra* note 1, Art 3(1).

⁸ See Moot Proposition, Annexure-1.

⁹ See Moot Proposition, Annexure-1, Art 4.

expressly mentioned in the agreement because *first*, the Bortex agreement is valid [A.1] and *second*, the State of Aryan has lost its right of invalidating the treaty [A.2].

[A.1] THAT THE BORTEX AGREEMENT OF 1998 IS VALID.

4. The counsel submits that the Bortex Agreement is valid because *first*, treaty obligation was breached by Aryan, *second*, there is a duty not to deprive the treaty of its object, *third* the right of State of Aryan to terminate the treaty is lost.

[A.1.1] THAT THE STATE OF ARYAN BREACHED THE TREATY OBLIGATION.

5. A State which has signed and ratified a treaty is under an obligation to carry out in good faith, the obligations which by the treaty it has accepted¹⁰; this is the most obvious and elementary application of the principle of *pacta sunt servanda*.¹¹
6. The Bortex Agreement of 1998 demarcated a new border line between Marshal and Aryan known as the Line of Control (LOC). The agreement also made it mandatory to make LOC a demilitarized zone.¹² On the 15th of October 2017, the Aryan army started conducting patrolling operations in the LOC.¹³
7. A material breach of the **Art. 3 of the Bortex Agreement, 1998** which states that the parties should not indulge in any act of aggression without a fair warning to each other¹⁴ as well as breach of **Article 60 of Additional Protocol I, 1977**¹⁵ which states that 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 given the extension is contrary to the terms of this agreement¹⁶, and the subject of such an agreement shall normally be any zone which fulfil conditions like no hostile use shall be made of fixed military installations or any activity linked to the military effort must have ceased¹⁷.

¹⁰ Vienna Convention on Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331 (hereinafter VCLT).

¹¹ 1 HUGH THIRLWAY, THE LAW AND PROCEDURE OF INTERNATIONAL COURT OF JUSTICE, 364, (1st ed. 2013).

¹² See Moot Proposition, ¶ 6.

¹³ See Moot Proposition, ¶ 7.

¹⁴ See Moot Proposition, Annexure-1.

¹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 60, June 8, 1977, 1125 UNTS 3 (hereinafter Additional Protocol I).

¹⁶ *ibid* at Art 60(1).

¹⁷ Additional Protocol I, *supra* note 15, Art 60(3).

8. The patrolling operations conducted by the State of Aryan, which were prohibited by the agreement and also condemned by the International community¹⁸ clearly depicts the voluntary breach of the treaty obligations.

[A.1.1.1] THAT THERE WAS AN ARMED CONFLICT AND UNJUSTIFIED USE OF FORCE BY THE ARYAN ARMY.

9. The basic principle of State Sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the State itself.¹⁹ States must not threaten or use force to violate existing international frontiers,²⁰ the result of which could be *jus in Bello* in favour of the Victim State.
10. Major Godman along with five soldiers attempted for a peaceful negotiation²¹ which resulted in an armed conflict and in unlawful use of force on the part of Aryan. It was an International Armed Conflict because there was resort to armed force between States²² and the unlawful use of force because the conflict occurred between Aryan Army and just six soldiers of the Marshal army, inferring the disproportional use of unjustified force by the Aryan army against the territorial integrity²³ of the State of Marshal. First, breach of treaty obligation, then use of unjust force clearly signifies the mala fide intention of the State of Aryan.
11. **Art 60(7) of Additional Protocol I**²⁴ releases the party from its obligation under the agreement which confers upon the zone, the status of demilitarized zone. Thus, this justifies the 'subsequent military operations'²⁵ on part of the State of Marshal to avoid a human catastrophe.

¹⁸ See Moot Proposition, ¶ 7.

¹⁹ INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT 12, (1st ed., 2001).

²⁰ UN Charter, *supra* note 5, Art 2(7).

²¹ See Moot Proposition, ¶ 8.

²² Prosecutor v. Dusko Tadic, Case No. IT-94-1-AR72 (ICTY, 1999).

²³ UN Charter, *supra* note 5, Art 2(4).

²⁴ Additional Protocol I, *supra* note 15, Art 60(7).

²⁵ See Moot Proposition, ¶ 9.

[A.1.2] THAT THERE IS DUTY NOT TO DEPRIVE A TREATY OF ITS OBJECT AND PURPOSE.

12. The notion of good faith, *inter alia*, requires that a party to a treaty shall refrain from acts calculated to prevent the due execution of the treaty or otherwise to frustrate its objects.²⁶ In the case of **Nicaragua v. USA**²⁷, the Court stated, “*the existence of a duty of the kind asserted by a State is dependent on the existence of a pactum, but the duty is itself not part of the pactum; the argument is that to servare a pactum, i.e. the parties to it must do more than merely fulfil its express terms*”²⁸.

[A.1.2.1] THAT THE TREATY SHOULD BE INTERPRETED IN GOOD FAITH.

13. The principle of Natural and Ordinary meaning,²⁹ where applicable particular words and phrases are to be given their normal, natural, and unstrained meanings in the context in which they occur.³⁰
14. In the **Temple case 1961**³¹ the above principle was illustrated as follows, “*the context of the words to be interpreted is in no way superfluous: on the contrary, it is possible for reference to the context to override what would be the ‘natural and ordinary meaning’ of the words out of that context—for example in the dictionary*”³².
15. The Bortex Agreement of 1998 was concluded as *traité-lois* i.e. as a law making treaty. The part of the agreement which designates the LOC to be a demilitarized zone clearly states the intent and consent of the parties to maintain peace and order. Also the agreement was concluded to govern all actions, activities and disputes which arise between Marshal and Aryan in relation to the LOC.³³
16. The phrase “*in relation to LOC*” should not be interpreted in contrary to good faith³⁴. The term should be interpreted in a broader sense to protect the natural and ordinary meaning of the treaty. The Marshal-Aryan Border skirmish was a result of breach of treaty obligations in relation to the LOC by the State of Aryan. The object and purpose of the

²⁶ Documents of the sixteenth session including the report of the Commission to the General Assembly, (1964) 2 Y.B. Int’l L. Comm’n 7, U.N. Doc. A/CN.4/SER. A/ 1964/ ADD. 1.

²⁷ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA), 1986 I.C.J. 14.

²⁸ THIRLWAY *supra* note 11 at 366.

²⁹ Gerald Fitzmaurice, *Treaty interpretation and other Treaty Point*, 1957 33 BRIT Y.B. INT’L L. 211.

³⁰ *ibid.*

³¹ Temple of Preah Vihear (Cambodia v. Thailand), 1962 ICJ Rep 6.

³² *ibid.*

³³ See Moot Proposition, Annexure-1.

³⁴ VCLT, *supra* note 10, Art 31(1).

agreement was to maintain peace, even in cases of disputes.³⁵ The State of Aryan should not be benefitted out of its own wrongdoings for the safety of the State of Marshal and to maintain the value of peaceful existence in the International community as stated in the **Barcelona Traction case**.³⁶

[A.1.2.2] THAT THE LOC IS STILL IN EXISTENCE.

17. There are a wide range of acts that may constitute manifestations of the exercise of State Sovereignty. It may be exercise of legislative, executive, judicial powers or the most Subjective Element i.e. the intent to act as a Sovereign.³⁷
18. The result of Marshal-Aryan border skirmish was annexation of parts of the LOC by the State of Marshal.³⁸ Annexation occurs when the acquiring State asserts that it now holds the territory, it produces no international legal effect with respect to *de jure* sovereignty over the territory.³⁹ The term annexation does not come within the ambit of ‘acquisition of territory’ as accepted in International law, it is an abbreviated way of describing acquisition of sovereignty over territory.⁴⁰ Annexation takes form of a claim of sovereignty following a military occupation of the territory.
19. In **DRC v Uganda**⁴¹ the court observed that

*Annexation has to follow a military occupation of a territory, when the occupying power decides to cement its physical control by asserting legal title*⁴².

20. Also, in the **Clipperton Island Case**⁴³ the award of the King of Italy, of January 28, 1931 Stated that,

Usually, to perfect the procedure of acquiring territorial sovereignty beginning with symbolic annexation, later occupation is necessary in order to enable the occupier to affect his exclusive and make his laws respected.

³⁵ See Moot Proposition, Annexure-1, Art. 4.

³⁶ Barcelona Traction, Light and Power Company Limited (Belgium v. Spain), (1970) ICJ Rep 3, ¶ 33.

³⁷ Marcelo G Kohen & Mamadou Hébié, *Territory, Acquisition*, 9 The Max Planck Encyclopaedia of Public International Law, 887-900.

³⁸ See Moot Proposition, ¶ 2.

³⁹ Daniel Costelloe, *Treaty Succession in Annexed Territory*, 65 ICLQ 343, 343-378 (2016).

⁴⁰ G Schwarzenberger, *Title to Territory: Response to a challenge*, 51 AJIL 308-24 (1967).

⁴¹ Case Concerning Armed Activities on the Territory of Congo (Democratic Republic of Congo v. Uganda), 2001 I.C.J. 168.

⁴² *ibid* at 693.

⁴³ Clipperton Island Case (France v. Mexico), 2 R.I.A.A. 1105 (1931).

But neither the claim to sovereignty nor, in fact, the occupation itself changes the status of the territory under International Law.⁴⁴

21. *Prima facie*, the dispossessed State typically maintains its claim to title over the annexed territory; its treaties should continue to apply in the territory.⁴⁵ Also, the fact that who has the right to administer the territory does not release the State of Aryan from its obligations and responsibilities under International Law.
22. As there has been no effective occupation, neither any act done with the intent to act as a Sovereign, therefore, the LOC cannot be deemed as non-existing. The change of circumstances having occurred *intuitu personae* i.e. because of the wrongful conduct of the State of Aryan itself, it cannot escape its liability by wrongfully waiving off its right over the territory. Therefore, it cannot take undue advantage of the present circumstances. So, the matter of non-existence of LOC cannot arise.

[A.2] THAT THE RIGHT OF STATE OF ARYAN TO INVOKE A GROUND FOR INVALIDATING AND SUSPENDING THE TREATY IS LOST.

23. The fundamental change of circumstances cannot be used to invoke the *doctrine of rebus sic stantibus* as it does not apply to treaties establishing a boundary according to **Art 62 (2) (a) of the Vienna Convention on the Law of Treaties**.⁴⁶ The Bortex agreement established a new border line between State of Aryan and the State of Marshal known as the Line of Control.⁴⁷ Therefore, the treaty is a boundary treaty.
24. Also, fundamental change of circumstances cannot be invoked as a ground for terminating or withdrawing from a treaty if it is the result of the breach by the party invoking it either of an obligation under the treaty or of any other International obligation owed to any other party to the treaty.⁴⁸
25. The fundamental change that has occurred, i.e. parts of LOC in the hands of Marshal is a result of breach of treaty obligations by the State of Aryan. The State of Aryan by virtue of its conduct has lost the right to invoke such a ground, as an escape from its responsibilities and obligations.⁴⁹

⁴⁴ Costelloe, *supra* note 39.

⁴⁵ Costelloe, *supra* note 39.

⁴⁶ VCLT, *supra* note 10, Art 62 (2) (a).

⁴⁷ See Moot proposition, ¶ 6.

⁴⁸ VCLT, *supra* note 10, Art 62(2) (b).

⁴⁹ VCLT, *supra* note 10, Art 62(2) (b).

26. The applicant thus submits that the Bortex Agreement is valid and as the parties have consented to be bound by the treaty, the ICJ under Art 36(1) has jurisdiction to decide upon the matter referred.

II. THAT THE STATE OF MARSHAL HAS RIGHT OF SELF DEFENCE WITH RESPECT TO THE POWs AND Mr ALEX.

[A] THAT THE STATE OF MARSHAL HAS RIGHT TO SELF DEFENCE.

27. **Art 2(4) of UN Charter**⁵⁰ prohibits use of force as well as threat of force. Also the 1970 Declaration sets out that every state “has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the United Nations.”⁵¹ The 1987 Declaration reaffirms what is said in 1970 Declaration.⁵²

28. Romana Sadurska, defined a threat of force as “a message, explicit or implicit, formulated by a decision maker and directed to the target audience, indicating that force will be used if a rule or demand is not complied with”.⁵³ There has been a clear oral communication of threat by the State of Aryan. The message saying “*Be Prepared, we are going to hit you soon*” fulfils the definition of threat stated above.

29. The provisions of the Hague Regulations have become part of customary law⁵⁴ and thus the Regulation applies in this case even if none of the States is a party to it. **Art 23(f) of Hague Convention, 1907**⁵⁵ prohibits improper use of enemy’s uniforms. The use of badge of a Major to indicate mutilated soldiers is an act of threatening the state. Irrespective of the fact that it may be of a Major or a Soldier, the uniform reflects order and discipline, and calls for subordination by displaying a variety of insignia, including badges that indicate rank, it calls for respect and fear and symbolizes strength and power and thus enhances the soldier’s stature in the eyes of comrades, civilians and the enemy⁵⁶. These acts are a clear indication that the State of Aryan is challenging Marshal’s strength and mocking the integrity of the army. The State of Aryan has thus used Major Godman’s

⁵⁰ UN Charter, *supra* note 5, Art 2(4).

⁵¹ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. Doc. A/8082 (1970) (hereinafter The 1970 Declaration).

⁵² Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, G.A. Res. 42/22, U.N. Doc. A/42/22/766 (1987) (hereinafter The 1987 Declaration).

⁵³ Romana Sadurska, *Threats of Force*, 82 AJIL 232, 239 (1988)

⁵⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory advisory opinion of 2004 (Wall opinion), 2004 ICJ Rep 136, 172.

⁵⁵ Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land art. 23(f), Oct. 18, 1907, 187 CTS 227 (hereinafter Hague Convention, 1907).

⁵⁶ Toni Pfanner, *Military uniforms and the law of War*, 86 IRRC 93, 100 (2004).

uniform improperly and mutilated the soldiers to induce fear in order to challenge the State of Marshal. Challenging the State is an implied form of threat to use force. It sends a message that the consequences would be dreadful in case of non-compliance of their demands. In such a situation the State of Marshal has every right to exercise its Right of Self Defence.

30. In the **Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory advisory opinion of 2004 (Wall opinion)**⁵⁷, the construction of a separation barrier by Israel constituted a non-forcible action, which the ICJ held to be unlawful. Israel argued, inter alia, that the construction of the wall constituted an action taken in self-defence.⁵⁸ The ICJ rejected this claim, not on the basis that non-forcible measures inherently fall outside of the scope of self-defence but rather because the threat perceived by Israel emanated from within its territory and not from an external state. By not dismissing the claim that the construction of the wall could constitute self-defence on the simple basis that it was a non-forcible measure, the Court may again have indicated that an action taken in self-defence need not necessarily involve the use of military force.
31. Also **Art 21 of ILC Articles on State Responsibility**⁵⁹ provides that 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. This provision thus further strengthens the right of self-defence. The fact that the detaining of POWs and not providing consular access to Alex falls within the ambit of self-defence as explained in UN Charter, the State is thus under no obligation to return the POWs and provide consular access to Alex.
32. The State of Marshal thus in exercise of its right of self-defence contends that *first*, the State of Marshal is not bound to return the POWs [A.1] and *second*, that the State is not bound to provide consular access to Alex [A.2].

⁵⁷ The Wall Opinion, *supra* note 54.

⁵⁸ The Wall Opinion, *supra* note 54 at 194.

⁵⁹ Draft Articles on State Responsibility on the Responsibility of State Responsibility for Internationally Wrongful Act art. 21, 53 UN GAOR Supp. (No. 10) at 43, U.N. Doc. A/56/10 (2001) (hereinafter ILC Articles on State Responsibility).

[A.1] THAT THE STATE OF MARSHAL IS NOT BOUND TO RETURN THE POWs.

33. **Art 4 of ICCPR**⁶⁰ provides that in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation. **Art 9 of the ICCPR**⁶¹ which prescribes for Right to Liberty is beyond the purview of the above stated criteria of non-derogable rights.
34. The State of Marshal is not bound to return the POWs as it was the State of Aryan's wrongful conduct which has led to the present state of circumstances. **Art 22 of ILC Articles on State Responsibility**⁶² defines the use of countermeasures as explained in the **Naulilaa Case**⁶³, "countermeasures might justify an act in principle contrary to the Law of Nations taken in response to a previous international wrongful act of another State and..... directed against that State". Further it was accepted by ICJ in the **Gabcikovo-Nagymaros Project Case**⁶⁴.
35. **Art 24 of ILC Articles on State Responsibility**⁶⁵ states that distress means a situation of extreme peril in which the organ of the state which adopts that conduct has, at that particular moment, no means of saving himself or persons entrusted to his care other than to act in a manner not in conformity with the requirements of the obligation in question.⁶⁶ The interest concerned is the immediate one of saving people's lives and to avoid the life-threatening situation. The first and foremost responsibility of any State is to protect its citizens.⁶⁷ The package that the Marshal outpost received on 2nd February, 2018 also came with a warning, '**Be Prepared, we are going to hit you soon**'.⁶⁸ In the **Rainbow**

⁶⁰ International Covenant on Civil and Political Rights art. 4, Dec 16, 1966, 999 U.N.T.S. 171(hereinafter ICCPR).

⁶¹ *ibid*, Art 9.

⁶² ILC Articles on State Responsibility, *supra* note 59, Art. 22.

⁶³ Portuguese Colonies Case (Naulilaa incident), 2 UNRIAA 1011 (1928).

⁶⁴ Gabčíkovo-Nagymaros Project (Hungary v. Slovakia) 1997 I. C. J. Rep. 7.

⁶⁵ ILC Articles on State Responsibility, *supra* note 59, Art. 24.

⁶⁶ *Summary records of the meetings of the thirty-first session*, (1979) 1 Y.B. Int'l L. Comm'n 133, U.N. Doc. A/CN. 4/SER. A/ 1979.

⁶⁷ *Supra* note 19.

⁶⁸ See Moot Proposition, ¶ 14.

Warriors Case⁶⁹, the circumstances of distress in the case of extreme urgency involving elementary humanitarian considerations were admissible.

36. The open warning by the State of Aryan that there could be an attack at any time, indicates extreme urgency where no other reasonable way can be adopted to prevent the threat to lives of the citizens. In times of war, the internment of captives is justified by a legitimate concern - to prevent military personnel from taking up arms once more against Captor State.⁷⁰ The release of 47,000 captured POWs would strengthen the Aryan army and make the State more vulnerable to attacks. In the **Gabčíkovo-Nagymaros Project**⁷¹ Court said that the peril appearing in the long term might be held to be “imminent” as soon as it is established at the relevant point of time, that the realisation of that peril, however far off it might be, is not thereby any less certain and inevitable. Therefore, the State of Marshal is not bound to return the POWs as no return to the *status quo ante* is realistically in sight.

37. Hence, the State of Marshal is totally justified in exercising its right of Anticipatory Self-defence to protect itself from the imminent threat lurking over the state.

[A.2] THAT THE STATE OF MARSHAL IS NOT BOUND TO PROVIDE CONSULAR ACCESS TO ALEX.

[A.2.1] THAT THE ACT OF ESPIONAGE IS ILLEGAL.

38. The basic rule of International Law provides that States have no right to encroach upon other State's internal affairs which is a consequence of the equality and sovereignty of States as propounded in **Art. 2(7) of the UN Charter**.⁷²

39. **Professor Quincy Wright**, is of the view that espionage violates international law because there is a duty “*to respect the territorial integrity and political independence of other States*”.⁷³ Professor Wright reaches this non-intervention doctrine based on **Article 2 of the U.N. Charter**⁷⁴, which declares “sovereign equality for all its Members,” and prohibits the “threat or use of force against the territorial integrity or political

⁶⁹ Rainbow Warriors (New Zealand v. France), 74 ILR 241.

⁷⁰ Commentary on the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 Aug 1949, International Committee of the Red Cross.

⁷¹ Gabčíkovo-Nagymaros Project, *supra* note 64.

⁷² UN Charter, *supra* note 5, Art 2(7).

⁷³ QUINCY WRIGHT, ESPIONAGE AND THE DOCTRINE OF NON-INTERVENTION IN INTERNAL AFFAIRS IN ESSAYS ON ESPIONAGE ON INTERNATIONAL LAW (Stranger ed. 1962).

⁷⁴ UN Charter, *supra* note 5, Art 2.

independence to any State,” and the restriction of international “intervention in matters which are essentially within the domestic jurisdiction of any State”.

40. The non-intervention principle was later upheld by the International Court of Justice in **Nicaragua v. United States**⁷⁵ where it was held that

“forbidding all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty to decide freely.”

41. Espionage is in fact in violation of International Law because it runs contrary to customary international law, the ICCPR, and the Vienna Convention on Diplomatic Relations.⁷⁶
42. Mr Alex was captured by Marshal as a civilian. Subsequently, it was discovered that he belonged to the Aryan Secret Service, the spy agency of Aryan. This forms the basis for belief that Mr Alex was a spy, committing espionage within the territory of the State of Marshal.

[A.2.2] THAT THERE IS NO OBLIGATION TO PROVIDE CONSULAR ACCESS.

43. **Art 5 of Geneva Convention IV**⁷⁷ states that *“Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State”*.
44. This finds further support from the judgment of the Permanent Court of Justice in the **S.S. Lotus Case (France v Turkey)**⁷⁸ where it declared that *“the first and foremost restriction imposed by international law upon a State is that failing the existence of a permissive rule*

⁷⁵ (Nicar. v. USA), *supra* note 27.

⁷⁶ Ashley S. Deeks, *Confronting and Adapting: Intelligence Agencies and International Law*, 102 Va. L. Rev. 599, 600 (2016).

⁷⁷ Geneva Convention Relative to the Protection of Civil Persons in Time of War art. 4, Aug. 12, 1949, 75 U.N.T.S 287 (hereinafter Geneva Convention IV).

⁷⁸ Lotus Case (Turkey v. France), 1927 P.C.I.J (ser. A) No.10.

*to the contrary it may not exercise its power in any form in the territory of another State.*⁷⁹”

45. Since espionage is a restriction imposed by the international law and is not permissible through State laws, thus no state can exercise this rule in contravention with the international law. Providing consular access to Alex would mean exposing our country to threat. Mr Alex being a member of Aryan Secret Services certainly has knowledge about the working of the Country. Providing Consular access would mean allowing that information to escape and helping a State to infringe in our sovereignty.
46. Thus Marshal is not bound to provide consular access to Alex because of his association with Aryan Secret Services. Thus this provision is clearly applicable in this case and the State of Marshal is not obliged to grant Mr Alex any kind of consular access.
47. The counsel humbly pleads that the State of Marshal is not bound to return the POWs and provide consular access to Mr Alex primarily as no return to the *status quo ante* is realistically in sight.

⁷⁹ *ibid* at 19.

III. THAT THE ACTS OF STATE OF ARYAN ARE IN VIOLATION OF INTERNATIONAL HUMANITARIAN LAW.

48. The counsel humbly submits that the State of Aryan has violated the provisions of International Humanitarian Law because *first*, the mutilation and torture of Major Godman and his companions was in violation of the Geneva Conventions and Additional Protocol I to Geneva Conventions, 1977 [A], *second* Aryan breached UDHR, ICCPR & ICESCR [B], *third* Aryan has violated Customary International Law [C].
49. **Art 38(1) of the ICJ Statute**⁸⁰ declares that any matter which is submitted in ICJ would be decided according to the prevalent customs, conventions and general principles accepted in international law thus validating the concept of protection of human rights as an age old custom. Thus violations of the treaties or conventions made regarding the prevention of atrocities on people and ratified by both the parties come under the jurisdiction of ICJ.⁸¹

[A] THAT THE MUTILATION AND TORTURE OF MAJOR GODMAN AND HIS COMPANIONS WAS IN VIOLATION OF GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL I TO GENEVA CONVENTIONS.

50. Geneva Convention is a part of the customary international law.⁸² The Geneva Conventions and the Additional Protocols were made to protect people during international armed conflicts or non-international armed conflicts. **Art 2 of the Third Geneva Convention**⁸³ provides with the application of the convention during international armed conflicts. Although there was no formal declaration of an armed conflict between the parties, there was an armed conflict which took place and so this convention is applicable nonetheless⁸⁴. Whenever the armed forces of two states that are party to the Geneva conventions of 1949 are entangled in hostilities the provisions of the conventions and those of AP I will apply. **The Additional Protocol I** is specifically

⁸⁰ ICJ Statute, *supra* note 1, Art 38(1).

⁸¹ ICJ Statute, *supra* note 1, Art 38(1).

⁸² (Nicar. V. USA), *supra* note 27.

⁸³ Geneva Convention Relative to Treatment of Prisoners of War art. 2, Aug. 12, 1949, 35 U.N.T.S 135 (hereinafter Third Geneva Convention).

⁸⁴ *ibid*.

applicable during the times of International Armed Conflict⁸⁵ and since the nature of this conflict is the same, thus this provision is applicable here. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached⁸⁶ as explained in **Prosecutor v. Tadic case**.

51. Major Dmitri Godman along with his five companions was captured as Prisoner of War. **Art 4A of the Third Geneva Convention**⁸⁷ clearly states that members of armed forces are POWs if captured. The Major and his soldiers were clearly the members of the armed forces. The Third Geneva Convention thus legitimizes their claim of protection as a POW. **Art 45 of Additional Protocol I**⁸⁸ protects all those persons who took part in hostilities and fell in the hands of hostile parties. It puts forth the status of POW to all such people thus protecting them with respect to the Third Geneva convention.
52. On 2nd of February 2018, the Marshal Border outpost received a sealed parcel containing mutilated body parts of all the soldiers with Major Godman's name tag appearing on top along with a letter.⁸⁹ Since even after being captured as a POW they were mutilated and tortured by the Aryan army, the State of Aryan breached the code of conduct of the laws of war and thus violated the third Geneva Convention.
53. **Art. 13 of the Third Geneva Convention, 1949**⁹⁰ states that POWs shall be humanely treated at every time and death or any kind of danger to his health would be considered a breach of the convention. No POW may be subject to physical mutilation or any medical or scientific experiment without justification. Similarly, **Art. 11 of the Additional Protocol I**⁹¹ guarantees the protection of such persons from any harm and inhuman treatment that have been captured as POWs. Also, **Art. 14 of Third Geneva Convention**⁹² provides that the POWs are entitled in all circumstances to respect for their persons and their honour.
54. In the case of **Prosecutor v. Kayishema and Ruzindana**⁹³ it was held by the trial chamber that both Kayishema and Ruzindana were guilty of committing war crimes and

⁸⁵ Additional Protocol I, *supra* note 15, Art 1.

⁸⁶ Tadic, *supra* note 22 at 119.

⁸⁷ Geneva Convention III, *supra* note 83, Art 4A.

⁸⁸ Additional Protocol I, *supra* note 15, Art 45.

⁸⁹ See Moot Proposition, ¶ 14.

⁹⁰ Geneva Convention III, *supra* note 83, Art 13.

⁹¹ Additional Protocol I, *supra* note 15, Art 11.

⁹² Geneva Convention III, *supra* note 83, Art 14.

⁹³ Prosecutor v. Kayishema and Ruzindana, Case No. ICTR-95-1-T (ICTR, 2001).

breaching IHL and were awarded life imprisonment of 25 years. Since there is explicit evidence that the POWs captured by the Aryan army were brutally tortured, there has been serious violation of the convention.

55. Similarly in the case of **The Prosecutor v. Jean-Paul Akayesu**⁹⁴, the ICTR declared that it has the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the four Geneva Conventions and for the Protection of War Victims, and of Additional Protocol I along with breach of humanitarian law by torturing the captured POWs and thus the defendant was prosecuted for not preventing the breach of Geneva convention as well as humanitarian law in international relations.
56. **Art 5 of the Third Geneva Convention**⁹⁵ applies to the persons referred to in **Art 4**⁹⁶ from the time they fall into the power of the enemy and until their final release and repatriation. Thus the POWs captured by Aryan had to be treated properly until the active hostilities between the two countries hadn't ceased. But the POWs were tortured and brutally killed by Aryan thus breaching the Geneva Conventions.
57. Some of the grave breaches of Laws of War under the Geneva Conventions are wilful killing, or causing great suffering or serious injury to body or health, torture or inhumane treatment, unlawful wanton destruction or appropriation of property, forcing a prisoner of war to serve in the forces of a hostile power, depriving a prisoner of war of a fair trial, unlawful deportation, confinement or transfer and taking hostages.⁹⁷ In the case of **Prosecutor v. Radislav Krstic**⁹⁸, General Major Radislav Krstic was indicted for genocide, crimes against humanity and violations of the customs of war. The trial chamber in 2001 convicted Krstic for committing genocide and crimes against humanity, briefed in a detailed manner under international humanitarian law, and awarded him 46 years of imprisonment.
58. **Art 75 of the Additional Protocol I**⁹⁹ mentions the rights of the people captured in a war along with the acts which are prohibited against them by the capturing State¹⁰⁰. Nations which signed the Geneva Conventions are required to search for, then try and punish,

⁹⁴ Prosecutor v. Akayesu, Case No. ICTR-96-4-T (ICTR, 1998).

⁹⁵ Geneva Convention III, *supra* note 83, Art 5.

⁹⁶ Geneva Convention III, *supra* note 83, Art 4.

⁹⁷ Geneva Convention III, *supra* note 83, Art 130.

⁹⁸ Prosecutor vs. Radislav Krstic, Case No. ICTR-98-33-T (ICTR, 2001).

⁹⁹ Additional Protocol I, *supra* note 15, Art 75.

¹⁰⁰ Additional Protocol I, *supra* note 15, Art 75.

anyone who has committed or ordered certain "grave breaches" of the laws of war.¹⁰¹ Breach of these conventions can make a country liable for violating the accepted norms.¹⁰² These suggest that Aryan engaged in grave breach of the Geneva Convention to which it is a party and ideally should prosecute all those who breached their duties.

[B] THAT THE STATE OF ARYAN HAS BREACHED THE UDHR, ICCPR & ICESCR.

59. The Universal Declaration of Human Rights was intended not as a legally binding document as such. But the declaration has subsequently become binding either by way of custom or general principles of law, or indeed by virtue of interpretation of the UN Charter itself by subsequent practice.¹⁰³ The Vienna Declaration and Programme of Action, adopted in 1993, emphasized that all human rights were universal, indivisible and interdependent and interrelated.¹⁰⁴ Similarly **Art. 2 of the ICESCR**¹⁰⁵ provides that each State party should take steps to the maximum its available resources' with the view to achieving progressively the full realization of the rights recognized in the present Covenant. This clears the view that the covenant is a binding legal obligation on the countries which choose to be its part.
60. By **Art 2 of ICCPR**¹⁰⁶, all State parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant. These rights are clearly intended as binding obligations. Aryan is a signatory member of these human rights treaties like Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Civil and Political Rights (ICCPR) 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, and come under the purview of International Bill of Human Rights.
61. Having regard to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ^{[107][108]} **Art**

¹⁰¹ Geneva Convention III, *supra* note 83, Art 129.

¹⁰² Hamdan v. Rumsfeld, 548 U.S. 557(2006).

¹⁰³ I OPPENHEIM, INTERNATIONAL LAW, (9th ed., 2008), p. 1002.

¹⁰⁴ M. N. SHAW, INTERNATIONAL LAW 280 (6th ed., 2008).

¹⁰⁵ International Covenant on Economic, Social and Cultural Rights art. 2, Dec 16, 1966, 993 UNTS 3 (hereinafter ICESCR).

¹⁰⁶ ICCPR, *supra* note 60, Art. 2.

¹⁰⁷ Universal Declaration of Human Rights art. 5, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (hereinafter UDHR).

1 of UDHR¹⁰⁹ declares that every person is free and have equal rights in the international society and that none should be denied so. There shall be no discrimination of people on grounds like sex, religion, national or social origin or political opinion.¹¹⁰ Every person has the right to life and personal liberty¹¹¹ and no one should be the subject of torture or mistreatment by anyone¹¹².

62. The State of Aryan violates this by torturing the POWs and not respecting their human rights. Aryan being a party to UDHR is obliged to respect the provisions of the Declaration. Mutilation of POWs is a grave breach of the International Human Rights Law and thus this gives rise to the responsibility of the state to protect all those from its breach.
63. ICCPR gives every person the right to self-determination by which they can freely pursue their rights.¹¹³ People would be free to determine their interests and liberty in terms of their selection of legislative measures.¹¹⁴ The Human Rights provided to people should be respected and that they should never be interpreted to be lesser at any point of time.¹¹⁵ Some writers expressed the view that international law guaranteed to individuals, certain fundamental rights usually referred to as rights of mankind. Such rights have been said to comprise the right to life, liberty, freedom of religion and conscience, and the like.¹¹⁶ and no one shall be deprived of their right to life arbitrarily.¹¹⁷
64. **Art 7 of ICCPR**¹¹⁸ states that no one should be the subject of inhuman treatment or of scientific experiments without his consent. It was seen that Aryan, without any formal trial of the POWs, prosecuted them and then mutilated them in a torturous way. This is a grave breach of International Law making. Aryan is liable for its violation. Thus, Aryan breached the international norms of protection of rights of people under its jurisdiction by violating their rights.

¹⁰⁸ ICCPR, *supra* note 60, Art. 7.

¹⁰⁹ ICCPR, *supra* note 60, Art 1.

¹¹⁰ UDHR, *supra* note 107, Art 2.

¹¹¹ UDHR, *supra* note 107, Art 3.

¹¹² UDHR, *supra* note 107, Art 5.

¹¹³ ICCPR, *supra* note 60, Art 1.

¹¹⁴ ICESCR, *supra* note 105, Art 2.

¹¹⁵ ICCPR, *supra* note 60, Art 5.

¹¹⁶ SHAW, *supra* note 104 at 849.

¹¹⁷ ICCPR, *supra* note 60, Art 6.

¹¹⁸ ICCPR, *supra* note 60, Art 7.

65. In the case of **Al-Skeini and others v. UK**¹¹⁹ the ECHR said that it is the duty of the state to investigate about the violation of human rights which if overlooked can make a country liable for breach of humanitarian law. Aryan never conducted any trial on the officers who mutilated and killed Major Godman and his comrades. Thus, they violated the provisions of ICCPR as well as International Humanitarian Law.
66. All these provisions showcase that breach of rights of anyone by a State amounts to a legal action against that State since even after being a signatory, the State is not abiding by the rules and violating the rights of the people. This is also applicable on those who are captured as POWs since getting humane treatment is their right. They can move to court if their rights are violated. **Art 26 of the Vienna Convention on the Law of Treaties (VCLT)**¹²⁰ exemplifies this principle. A vital, concomitant rule of customary international law is that no State party to a treaty may invoke the provisions of its internal law as justification for its failure to perform a treaty (Article 27 VCLT).

[C] THAT THERE HAS BEEN A VIOLATION OF CUSTOMARY INTERNATIONAL LAW.

67. Customary international laws are those laws which have been in use since a long time and now have become a part of accepted rules of international law. The Statute of the International Court of Justice acknowledges the existence of Customary International Law in **Art 38(1) (b)**¹²¹, **incorporated into the United Nations Charter by Art 92**¹²². Thus, parts of Humanitarian Law form a part of the customary law.
68. Serious breaches of international humanitarian law committed against civilians or enemy combatants during an international or domestic armed conflict is strictly prohibited. In the case of **Prosecutor v. Paul Bisengimana**¹²³, Paul Bisengimana was convicted of genocide and breach of IHL and was awarded 15 years of imprisonment. Such breaches are derived primarily from the Geneva Conventions and their Additional Protocols I and II, and the Hague Conventions of 1899 and 1907. **Art 4 of Hague Convention, 1907**¹²⁴ states that all Prisoners of War should be humanely treated.

¹¹⁹ Al-Skeini and Others v. United Kingdom, (2011) ECHR 55721/07.

¹²⁰ VCLT, *supra* note 10, Art 26.

¹²¹ ICJ Statute, *supra* note 1, Art 38 (1) (b).

¹²² UN Charter, *supra* note 5, Art 92.

¹²³ Prosecutor v. Paul Bisengimana, Case No. ICTR-2001-60-I (ICTR, 2006).

¹²⁴ Hague Convention, *supra* note 55, Art 4.

69. The rules of customary international law envisage the values of protection of all those who were captured during the war and are now in the custody of the conflicting country. It prohibits any kind of torture mental or physical torture to the captured combatants as well as civilians¹²⁵. If a country or a person engages into such acts, it is liable of breach of customary law and violation of the terms agreed under various conventions.
70. In the case of **Prosecutor v. Tadic**¹²⁶ the defendant was held accountable for inhuman treatment and breach of International Humanitarian Law. The Geneva Conventions and Protocol I define a certain number of violations as “grave breaches” and establish the principle of compulsory universal national jurisdiction over persons who have allegedly committed such crimes¹²⁷. The accused was guilty on 11 counts of persecution and beatings and so this case was a rather landmark one in terms of development of humanitarian law.
71. Likewise in **Democratic Republic of Congo v. Uganda**¹²⁸ the court considered that it had credible evidence sufficient to conclude that UPDF (Uganda Peoples’ Defence Forces) troops had committed violations of international humanitarian law and human rights law. It found that these violations were attributable to Uganda. Thus they were held liable under breach of humanitarian law and human rights law and were asked to pay compensation¹²⁹. In the case of **Bosnia and Herzegovina v. Serbia and Montenegro**¹³⁰, it was explicitly decided by the court that since there was an infringement of fundamental humanitarian law, thus the state would be liable for its breach.
72. The customary rules applicable in International Armed conflicts have always protected people from arbitrary powers during armed conflicts. It prohibits any distinction between people on the basis of colour, sex, or national origin¹³¹, and prevents humiliating and degrading treatment of anyone¹³². Mutilation or experiments is prohibited to be performed on anyone¹³³. It has also been agreed that every State should respect the International

¹²⁵ DRC v. Uganda, *supra* note 41.

¹²⁶ Tadic, *supra* note 22.

¹²⁷ Tadic, *supra* note 22.

¹²⁸ DRC v. Uganda, *supra* note 41.

¹²⁹ DRC v. Uganda, *supra* note 41.

¹³⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) 2007 I.C.J Rep 43.

¹³¹ Rule 88; IAC.

¹³² Rule 90; IAC.

¹³³ Rule 92; IAC.

humanitarian law and ensure that it is acted upon by every member of the State¹³⁴ and this obligation does not depend on reciprocity¹³⁵.

73. Under Customary International law, there are other conventions through which protection of the rights of people are governed. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Convention against Torture is one of these. It clearly showcases that torture is both mental as well as physical which are unlawfully committed¹³⁶ and that no exceptional circumstance such as war or threat of war can be invoked to justify torture¹³⁷.

¹³⁴ Rule 139; IAC.

¹³⁵ Rule 140; IAC.

¹³⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984) (hereinafter CAT), Art 1.

¹³⁷ *ibid* Art 2.

IV. THAT THE STATE OF ARYAN IS LIABLE TO PAY DAMAGES UNDER INTERNATIONAL LAW.

74. The counsel humbly submits that the State of Aryan is liable to pay damages under International Law because *first*, that State of Aryan is responsible for Army's act [A], *second* that the State has liability to make full reparation for the damages caused by Army's act [B].

[A] THAT THE STATE OF ARYAN IS RESPONSIBLE FOR THE ARMY'S ACT.

Art 91 of Additional Protocol I¹³⁸ states that,

A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces

75. Also in the case of **Armed Activities on the Territory of the Congo (DRC v. Uganda)**¹³⁹, the answer to the question whether the acts and omissions of Uganda Peoples' Defence Force (UPDF) and its officers and soldiers is attributable to the State of Uganda was given by the court. The court in its judgment Stated that "*the conduct of individual soldiers and officers of the UPDF is to be considered as the conduct of a State organ. In the Court's view, by virtue of the military status and function of Ugandan soldiers in the DRC, their conduct is attributable to Uganda.*"

76. For an internationally wrongful act of the State there needs to be a conduct consisting of an action or omission that is attributable to the State under International law and breach of an international obligation of the State.¹⁴⁰ The Aryan army which is an organ of the State has mutilated the prisoner of War which is clear violation of International Humanitarian Law, the act is attributable to the State.

Art 12 of ILC Articles on State Responsibility¹⁴¹ states that

There is a breach of International obligation by a State when an act is not in conformity with what is required of it by that obligation, regardless of its origin or character.

¹³⁸ Additional Protocol I, *supra* note 15, Art 91.

¹³⁹ DRC v. Uganda, *supra* note 41, at 242.

¹⁴⁰ ILC Articles, *supra* note 59, Art 2.

¹⁴¹ ILC Articles, *supra* note 59, Art 12.

77. The International Humanitarian Law imposes an obligation on the States for humane treatment of POWs. Any act in contradiction to it leads to breach of International obligation. In the given case, the Marshal outpost received a parcel on 2nd January 2018 from the Aryan army which had mutilated body parts of all the soldiers captured by Aryan during war with the name tag of Major Godman appearing on top of it.¹⁴² Mutilation of POWs is a sheer violation of obligation imposed by the Geneva Convention on Prisoners of Wars as well as other sources of International Humanitarian law. The Aryan army being unable to act in conformity with the requirement of the obligations imposed has committed an internationally wrongful act. The liability of the State for an unlawful act committed by its agent causing injury is strict.¹⁴³ Strict liability means that any unlawful act committed by the agent of the State, which causes injury, makes the State responsible towards the State suffering damage irrespective of good and bad faith.¹⁴⁴
78. The conduct of any State organ shall be considered as an act of that State under International law irrespective of the function it performs or the position it holds in the organization of the State.¹⁴⁵ This provision further clarifies that the breach of international obligations by any organ of the State makes the State responsible for such conduct.
79. The Court observed in the advisory case of **Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights**¹⁴⁶ ‘*According to a well-established rule of International law, the conduct of any organ of a State must be regarded as an act of the State*’.
80. Also the ICJ in the **Genocide Convention (Bosnia v. Serbia)**¹⁴⁷ regarded it as “*one of the cornerstones of the law of State responsibility, that the conduct of any State organ is to be considered an act of the State under International law, and therefore gives rise to the responsibility of the State if it constitutes a breach of an obligation of the State*”.

¹⁴² See Moot Proposition, ¶ 14.

¹⁴³ SHAW, *supra* note 104, 783.

¹⁴⁴ SHAW, *supra* note 104, 783.

¹⁴⁵ ILC Articles, *supra* note 59, Art 4.

¹⁴⁶ Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, [1999] ICJ Reports 62, 87.

¹⁴⁷ Genocide Case, *supra* note 130 at 202, ¶ 385.

[B] THAT THE STATE HAS RESPONSIBILITY TO MAKE FULL REPARATION.

81. The responsible State is under an obligation to make full reparation for the injury which includes both moral and material damage caused by the internationally wrongful act.¹⁴⁸ The full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination.¹⁴⁹
82. The purpose of reparation is not to make a party wealthier but to restore it to a position as if the injury didn't happen. The remedies for gross violations of International human rights law and serious violations of International humanitarian law include the right to adequate, effective and prompt reparation for harm suffered.¹⁵⁰ The breach of International obligation by the Aryans makes them responsible to pay full reparation for damages due to such breach.
83. The Permanent Court of Justice had stated in **Chorzow Factory Case**¹⁵¹ that "*it is a principle of International law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to International law*"¹⁵².
84. In the **Gabčíkovo-Nagymaros Project (Hungary/Slovakia) case**¹⁵³ the court noted that "*it is a well-established rule of International law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it*".
85. In **Spanish Zone of Morocco (Great Britain v. Spain) claims**¹⁵⁴, arbitrator Huber stated that "*responsibility is the necessary corollary of a right. All rights of an International character involve International responsibility. Responsibility results in the duty to make reparation if the obligation in question is not met*"¹⁵⁵.

¹⁴⁸ ILC Articles, *supra* note 59, Art 31.

¹⁴⁹ ILC Articles, *supra* note 59, Art 34.

¹⁵⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law art 11, GA Res., 147, U.N Doc A/RES/60/147 (2006).

¹⁵¹ Factory at Chorzów, (Germany v. Poland), PCIJ, Series A, No. 17, 1928.

¹⁵² *ibid* at 29.

¹⁵³ Gabčíkovo-Nagymaros Project, *supra* note 64 at 81, ¶ 152.

¹⁵⁴ Spanish Zone of Morocco (Great Britain v. Spain), 2 RIAA 641(1924).

¹⁵⁵ *ibid* at 658.

[B.1] THAT STATE OF ARYAN SHOULD PROVIDE COMPENSATION FOR VIOLATION OF INTERNATIONAL HUMANITARIAN LAW.

86. A party to Additional Protocol I of Geneva Convention is liable to pay compensation, if the case demands, in case of breach of the Protocol or the Geneva Conventions.¹⁵⁶ The State of Aryan in the given case has clearly breached Additional Protocol I as well as Third Geneva Convention by mutilating Major Godman and his companions.
87. A State is under an obligation to compensate for damages caused by internationally wrongful act if it is not made good by restitution.¹⁵⁷ Since it is materially impossible to restore the position that existed before, hence the parties must pay compensation.¹⁵⁸
88. The gruesome torture on soldiers including mutilation, permanently disabling or removing an organ and endangering mental and physical health¹⁵⁹ are sheer violation of International obligations imposed by the International law. The State of Marshal thus has the right to compensation. Though the lives of soldiers cannot be equated to any amount of money but the payment of compensation will act as a lesson for the State of Aryan to not violate IHL.
89. In the **Lusitania cases (United States v. Germany)**¹⁶⁰ it was noted that non-material injuries “*are very real, and the mere fact that they are difficult to measure or estimate by money standards makes them none the less real and affords no reason why the injured person should not be compensated therefore as compensatory damages*”
90. The Court in **Ahmadou Sadio Diallo Case (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment**¹⁶¹ allowing compensation for “moral” damage decided that “*the Democratic Republic of the Congo is under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of International obligations*”¹⁶².
91. The **Eritrea-Ethiopia Claims Case**¹⁶³, the Commission stated that “*the seriousness of killing POWs needs no explanation*” awarded compensation for the mistreatment.

¹⁵⁶ Additional Protocol I, *supra* note 15, Art 91.

¹⁵⁷ ILC Articles, *supra* note 59, Art 36(1).

¹⁵⁸ Corfu Channel (United Kingdom v. Albania), 1949 ICJ Rep 4.

¹⁵⁹ See Moot proposition, ¶ 15.

¹⁶⁰ Opinion in Lusitania Cases (United States v. Germany), 7 R.I.A.A. 32 (1923).

¹⁶¹ Case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, 2010 ICJ Rep 639.

¹⁶² *ibid* at 693.

¹⁶³ Eritrea v. Ethiopia, 26 R.I.A.A. 631 (2003).

92. In conclusion, it is submitted that the Aryan army is an organ of State of Aryan which makes the State of Aryan is responsible for the gruesome treatment of the five soldiers International Law. The State of Aryan is also liable to make full reparation for damages caused by the mutilation of the six soldiers which has violated International Humanitarian Law. The State of Marshal seeks reparation in form of compensation since the original condition cannot be restored. It is humbly requested that the court decides appropriate compensation for the violation of International Humanitarian Law.

FINAL SUBMISSION TO THE TRIBUNAL

Wherefore, in the light of the facts Stated, authorities cited and arguments advanced, it is humbly prayed that this Hon'ble Court may:

- Declare that the application for jurisdiction of International Court of Justice is maintainable.
- Declare that the State of Marshal is not bound to return the POWs and provide consular access to Alex.
- Declare that the acts of State of Aryan are in violation of International Humanitarian Law.
- Declare that the State of Aryan is liable to pay damages to the State of Marshal.

Any other order as it deems fit in the light of justice, equity and good conscience.

For this kindness the applicant shall be duty bound forever.

**Respectfully submitted,
Agent on behalf of the Applicant**