
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 Respondent

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	IV-V
INDEX OF AUTHORITIES	VI-XIII
STATEMENT OF JURISDICTION	xiv
QUESTIONS PRESENTED	xv
STATEMENT OF FACTS	xvi-xvii
SUMMARY OF ARGUMENTS	XVII-XVIII
ARGUMENTS ADVANCED	1-21

ISSUE-I

[1.] WHETHER THE INTERNATIONAL COURT OF JUSTICE HAS JURISDICTION OVER THE CASE?	1
[1.1] Aryan has not consented to ICJ's jurisdiction.	1-3
[1.2] Subject matter of the dispute does not arise under Article 4 of BA.	3
[1.3] Even if the present dispute is covered under the BA, the treaty stands terminated.	4

ISSUE-II

[2] WHETHER THE TREATMENT METED OUT TO MAJOR DMITRI GODMAN IS BEYOND THE SCOPE OF THIS COURT'S JURISDICTION?	5
[2.1] Alleged treatment of Godman is not a subject matter covered.	5
[2.2] There is no substantial evidence of treatment meted out to Godman.	5-6

ISSUE-III

[3] WHETHER PRISONERS OF WAR SHOULD BE RETURNED BACK TO THE ARYAN?	6
[3.1.] Detainment of POWs is contrary to the Geneva Convention on the treatment of POWs.	6
[3.1.1] POWs are kept in "unlawful confinement".	7
[3.2] Consequential inhuman treatment with the POWs is contrary to the Customary International Humanitarian Law.	8

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

[3.2.1] Sizeable number of POWs captured by Marshal would affect the nature of the state. --	
-----	8-9

ISSUE-IV

[4] WHETHER ARYAN IS ENTITLED TO APPROPRIATE DAMAGES? -----	10
[4.1] Act of army are attributable to marshal. -----	10-11
[4.2] Acts are internationally wrongful act -----	11-12
[4.2.1] Violation of Customary International Law-----	13
[4.2.2] Violation of Treaty Law-----	14
[4.3] Monitory Loss-----	14
[4.4] Harm to the territorial integrity, security, and International standing-----	14-15

ISSUE-V

[5] WHETHER THE MARSHAL HAS VIOLATED INTERNATIONAL LAW BY DENYING CONSULAR ACCESS TO MR. ALEX? -----	16
[5.1] Mr. Alex is a national of Aryan. -----	16-17
[5.1.1] Mr. Alex has the right to consular access by the virtue of his nationality. -----	
-----	17-18
[5.1.2] Mr. Alex has inherent right to life-----	18
[5.1.3] Mr. Alex has the right to liberty and security of his life-----	19
[5.2] Consular officer of Aryan has a right to access Mr. Alex. -----	19-21
[5.3] Denial of consular access to Mr. Alex has violated Customary International Law. -----	
-----	20-21
PRAYER FOR RELIEF-----	22

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

	Yugoslavia
IHL	International Humanitarian Law
ILC	International Law Commission
J.	Journal
LOC	Line of Control
MPEPIL	Max Plank Encyclopedia 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

INDEX OF AUTHORITIES

I.CJ. AND P.C.I.J. CASES

CASES

Israel v Bulgaria, Aerial Incident of 27 July 1955, Preliminary Objections, ICJ Rep 127. -----	
-----	2,3
<i>United Kingdom v Iran</i> , Anglo-Iranian Oil Co., Judgment, ICJ Rep 93. -----	
-----	1,2
<i>United kingdom v. Argentina</i> , Antarctica case, ICJ Rep 12. -----	1
Mexico v. United States of America, Avena and Other Mexican Nationals, ICJ Rep 12. -----	
-----	15
Nicaragua v Honduras, Border and Transborder Armed Actions, ICJ Rep 69. -----	
-----	8
United States of America v. Union of Soviet socialist republics, Case concerning the aerial incident. -----	
Paraguay v. United States of America, ICJ Rep 248 -----	14
America v. Iran, Case concerning united states diplomatic and consular staff in tehran United States of ICJ GL No 64, [1980] ICJ Rep 3. -----	3,4
Italy v France and ors, Monetary Gold Removed from Rome in 1943, ICJ Rep 19. -----	
-----	8,7
United States v USSR, Treatment in Hungary of Aircraft and Crew of United States of America, ICJ Rep 103 -----	1,2
Nauru v Australia, Certain Phosphate Lands in Nauru, preliminary objections, ICJ Rep 240---	
-----	1
Djibouti v. France, Certain questions of mutual assistance in criminal matters judgment, ICJ GL No 136, [2008] ICJ Rep 177. -----	7,8

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

Eritrea Ethiopia Claims Commission, Partial Awards, Civilian Claims, 44 I.L.M. 601. -----	
-----	10
Libya v Malta, Continental Shelf, Judgment, [1985] ICJ Rep 13-----	09
United Kingdom v Albania, Corfu Channel, Judgment, (1948) ICJ Rep 15 -----	
-----	9,10
Fisheries Jurisdiction, Spain v Canada, Judgment, [1998] ICJ Rep 432. -----	
-----	3
Hungary v Slovakia, Gabčíkovo-Nagymaros Project, Judgment, judgment, ICJ Reports 1997-	
-----	2, 10
Martínez Liébano and 36 others v Venezuela, IACHR Series C no 150. -----	
-----	16
Germany v United State, LaGrand, ICJ GL No 104, [2001] ICJ Rep 466. -----	
-----	14, 15
Nicaragua v United States, Military and Paramilitary Activities in and Against Nicaragua,	
(1986) ICJ Rep 14. -----	
Portugal v Australia, East Timor, [1995] ICJ Rep 90. -----	
Liechtenstein v Guatemala, Nottebohm, Preliminary Objection, [1953] ICJ Rep 111. -----	

Italy v France, Phosphates in Morocco, PCIJ Series A/B No 74. -----	
New Zealand v. France, Rainbow warrior case, France-New Zealand Arbitration Tribunal,	
82 I.L.R. 500 (1990). -----	
Sufi and elmi v. United kingdom, app. Nos. 8319/07, 11449/07, eur. Ct. H.r. (2011) -----	
-----	16
India v. Pakistan, Jadhav case, ICGJ 515 (ICJ 2017). -----	
Velásquez Rodríguez and ors v Honduras, IACHR Series C no 9. -----	
-----	16

TREATIES AND CONVENTIONS

Charter of the United Nations (1945), 1 U.N.T.S. XVI-----

-----2

Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in
Case of War on Land (1910), U.S.T.S. 540, 2 A.J.I.L. Supp. 117-----

-----7

Hague Convention (XIII) Respecting the Rights and Duties of Neutral Powers in Naval War
(1910), U.S.T.S. 545, 2 A.J.I.L. Supp. 207-----

--7

International Committee of the Red Cross (ICRC), Customary International Humanitarian
Law (2005) -----

-6, 7, 16.

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-----

-----6, 7, 11

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-----

-----6, 7, 11

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth
Geneva Convention), (1949), 75 UNTS 2876- -----

Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva
Convention), (1949), 75 UNTS 135-----

-----6, 7, 11

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 36, 8, 12, 18

International Committee of the Red Cross (ICRC), 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-----

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

-----7	
International Covenant on Civil and Political Rights (1976), 999 U.N.T.S. 171-----	

12, 16	
Statute of the International Court of Justice, (1946), 33 U.S.T.S. 993-----	

-----1	
UN General Assembly, Rome Statute of the International Criminal Court, 17 July 1998-----	

--7, 11	
Vienna Convention on Consular Relations (1967), 596 U.N.T.S. 261-----	

15, 17	
Vienna Convention on Diplomatic Relations (1964), 500 U.N.T.S. 95-----	

-----17	
Vienna Convention on the Law of Treaties (1969), 1155 U.N.T.S. 331-----	

---2, 3	

U.N. DOCUMENTS

Articles on the Responsibility of States for Internationally Wrongful Acts, (I.L.C. Yearbook--	
-----9,10,13	
Declaration on the human rights of individuals who are not nationals of the country in which	
they live, General Assembly resolution 40/144, 116th plenary meeting, UN Doc	
A/RES/40/144 (13 December 1985), -----	
-----17	
Draft Articles on the Law of Treaties with commentaries, Yearbook of the ILC, 15 th session	
(1963) -----4	

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

Draft Articles on the Law of Treaties with commentaries, Yearbook of the International Law Commission [ILC], 14 th session (1962) -----	
-----	4
Human Rights Committee, General Comment 35, Article 9 (Liberty and security of person), CCPR/C/GC/35. -----	16
International Law Reports, Vol. 132, pg.51-----	3
Official Records of the General Assembly, Tenth Session (1958) -----	
-----	4

Books

Charles cheney hyde, international law chiefly as interpreted and applied by us 1524 (2 nd rev. Ed. 1945). -----	3
Christian eckart, promises of states under international law (2012)-----	1
Daniel wisher, immigration detention: law, history, politics (2011) -----	
-----	6
David r. Deener, the united states attorneys general and international law (1957) -----	
-----	3, 4
Dieter fleck, the handbook of international humanitarian law (ed. 2013) -----	6
Handbook on accepting the jurisdiction of the international court of justice-----	
-----	1
Heike kriegler, east timor and the international community: basic documents (1996) -----	
-----	1
International court of justice, summaries of judgments, advisory opinions, and orders of the international court of justice (2013) -----	
-----	1
Krzysztof j. Pelc, making and bending international rules: the design of exceptions and escape clauses in trade law (2018) -----	
-----	3, 4
Lung-chu chen, longzhi chen, an introduction to contemporary international law: a policy-oriented perspective (2000). -----	
-----	2

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

Mark eugen villiger, commentary on the 1969 vienna convention on the law of treaties (2009)	

-----2	
Martin dixon, robert mccorquodale, sarah williams, cases & materials on international law (1991)	

-----1, 2	
Neil boister, robert cryer, documents on the tokyo international military tribunal: charter, indictment and judgement (vol. 1, 2008)	

-----3, 4	
Oliver dörr and kirsten schmalenbach (eds.), the vienna convention on the law of treaties: a commentary (2012)	

-----2	
Olivier corten, pierre klein, the vienna conventions on the law of treaties: a commentary, volume 1 (2011).	

-----2	
Rafael leal-arcas, andrew filis, ehab s. Abu gosh, international energy governance: selected legal issues (2014)	

-----1	
Renata szafarz, the compulsory jurisdiction of the international court of justice (1991)	

-----2	
Robert beckman and dagmar butte, introduction to international law.	

-----2	
Robert kolb, the international court of justice (2013)	

-----1	
Scott davidson, the law of treaties (the library of essayas in international law) (vol. 1 ed. 2004)	

-----3	
Shiv r.s. bedi, the development of human rights law by the judges of the international court (2007)	

-----1	
Stuart hull mcintyre, legal effect of world war ii on treaties of the united states (1958).	

-----3, 4	

Tugrul, ansay, recueil des cours de l'academie de droit international de la haye: collected
courses of the hague academy of int'l law (vol. 146, 1974) -----

-----3

United nations, recueil des arrêts, avis consultatifs et ordonnances (2002). -----

-----1

ARTICLES

FRANÇOISE KRILL, *The ICRC's policy on refugees and internally displaced civilians*, 83
IRRC 843 (2001) -----

---7

Maura A. Bleichert, *The Effectiveness of Voluntary Jurisdiction in the ICJ: El Salvador v.
Honduras, A Case in Point*, 16 FOR. INT'L LAW J. 799 (1992) -----

-----2

Riaz Mohammad Khan, *Vienna Convention on Law of Treaties— Article 62 (Fundamental
Change of Circumstances)*, 26 PAK HRZN 16 (1973) -----

-----3

Romano, Cesare P.R., *International Justice and Developing Countries: A Quantitative
Analysis*. 1 LPICT 367 (2002). -----

-----2

Stanimir A. Alexandrov, *The Compulsory Jurisdiction of the International Court of Justice:
How Compulsory Is It?*, 5 CHN. J. INT'L 29 (2006) -----

-----2

T. J. A. Schillings, *Article 36 of The Vienna Convention on Consular Relations*, INT. & EU.
LAW, University of Tilburg (2016). -----

-----15

Yuval Shany, *Jurisdiction and Admissibility*, OXF. HANDBK. INT'L ADJ. (2013). -----

-----3

STATEMENT OF JURISDICTION

Pursuant to Article 79, paragraph 1, of the International Court of Justice Rules of Court (1978), the Aryan (“Respondent”) has filed a timely preliminary objection to this Honorable Court’s jurisdiction over the subject matter of the dispute between Respondent and the Marshal (“Applicant”). The applicant has invoked jurisdiction of ICJ under Art. 36(1) of the ICJ. If this Court determines that it does have jurisdiction to decide the subject matter of the dispute, this Court would have jurisdiction over this matter pursuant to Statute of the International Court of Justice, Art. 40(1), since applicant submitted an application instituting proceedings.

QUESTION PRESENTED

The Aryan respectfully requests the Court to adjudge:

-I-

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

-II-

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

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

Aryan is a democratic country and Marshal is a despotic state which is ruled by a dictator, General Vadim. In past, Marshal has annexed certain territories of Aryan, which culminated in the Bortex Agreement of 1998 demarcating a new border line between Aryan and Marshal known as the Line of Control (LOC) which also made it mandatory to make the LOC a demilitarized zone.

On 15th of October 2017, the Aryan army conducted patrolling operations in the LOC. Major Godman went on to stop the patrolling by the Aryan army along with five other soldiers, and all of them were eventually caught after they ran out of ammunition. Marshal army then conducted large scale military operations in the LOC resulting in a full-fledged war within the territory known as the Marshal- Aryan border skirmish.

Marshal emerged victorious, annexed the LOC and captured 47000 Prisoners of War (POW) and 100 civilians. After the humiliating defeat in the war, martial law was imposed in the Aryan. 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, however, Marshal agreed to release the civilians except one namely Mr. Alex, whom they claimed was being detained on charges of espionage. General Vadim stated at the United Nations General Assembly, 'Every time, we have to tolerate their rubbish. This time, we will make them pay for their sins'. Even consular access to Mr. Alex was denied.

On 2nd February 2018, the Marshal border outpost received a parcel containing mutilated body parts of all the soldiers captured by Aryan with Major Godman's name tag appearing on top. Within Aryan, fingers were being pointed towards General Vadim and the insensitive remarks that he had made at the General Assembly session. 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 in a matter which can be resolved through diplomatic means. It also maintains that Article 4 of the BA is not applicable to the present matter since the LOC as envisaged in the BA does not currently exist. 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.

SUMMARY OF ARGUMENTS

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

The ICJ does not have jurisdiction over the present dispute because Aryan has not consented to submit this dispute to the ICJ, and is under no obligation to do so. Also, the subject matter of the dispute does not arise under Article 4 of the BA agreement. There is a fundamental change of circumstance and Aryan contends that Article 4 of the BA does not apply to the present matter since the LOC as envisaged in the BA does not currently exist. This Court should acknowledge the parties' disagreement, hold that it does not have jurisdiction to adjudicate this dispute, and allow the parties to settle their dispute via mutually agreeable means.

[2.] WHETHER THE TREATMENT METED OUT TO MAJOR DMITRI GODMAN IS BEYOND THE SCOPE OF THIS COURT'S JURISDICTION?

The treatment meted out to Major Dmitri Godman is not a subject matter that is covered under the BA. Even if the Court has jurisdiction over this dispute, Marshal failed to establish any substantial evidence of inhuman treatment meted out to Godman.

[3.] WHETHER PRISONERS OF WAR SHOULD BE RETURNED BACK TO THE ARYAN?

Prisoners of war should be released and repatriated back to the Aryan. By keeping the POWs in the permanent captivity, Marshal has violated the all the respective Geneva conventions and consequential inhuman treatment with POWs by detaining them are contrary to the principles of International law. The Marshal has captured a sizeable number of POWs which affected the integrity of the Aryan.

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

Aryan is entitled to appropriate damages for the Marshal because all the acts of the army are attributable to the Marshal and all the acts performed by the Marshal are internationally wrongful. Marshal has violated Customary International Law, by treating POWs inhumanely,

and BA, by not adhering with the obligation of it. Aryan has also faced monetary losses due to the expenditure in the war. The compensation should also be awarded for the mental and emotional harm suffered by the POWs.

[5.] WHETHER THE MARSHAL HAS VIOLATED INTERNATIONAL LAW BY DENYING CONSULAR ACCESS TO MR. ALEX?

Marshal has violated International law by denying consular access to Mr. Alex. The arbitrary detainment of Mr. Alex was against the principles of International Law, his right to life and liberty have been violated by the Marshal. The consular officer of Aryan has a right to access Mr. Alex because there is no substantial evidence to prove that Mr. Alex is the espionage and thus, restricting his rights are the violation of International treaties to which both states are parties to.

ARGUMENTS ADVANCED

ISSUE-I

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

Aryan firmly opposes ICJ's jurisdiction in the present dispute because [1.1] Aryan has not consented to ICJ's jurisdiction; [1.2] Subject matter of the dispute does not arise under Article 4 of BA; and [1.3] Even if the present dispute is covered under the BA, the treaty stands terminated.

[1.1] ARYAN HAS NOT CONSENTED TO ICJ'S JURISDICTION.

Article 36(1) of the International Court of Justice [*hereinafter* ICJ] statute states that, "The jurisdiction of the court comprises all cases which the parties refer to it."¹ One of the fundamental principles of the statute is that it cannot decide a dispute between the States without the consent of those States to its jurisdiction.² At this stage, the court has no jurisdiction to deal with the application. The court transmits the application to the potential respondent State.³ However, the court cannot take any other action, unless and until the state against which such application is made consents to the court's jurisdiction for the purposes of

¹ Statute of the International Court of Justice, (1946), 33 U.S.T.S. 993 art. 36(1) [*hereinafter* ICJ Statute]; HANDBOOK ON ACCEPTING THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE, pg.19, ¶68; *See also*: RAFAEL LEAL-ARCAS, ANDREW FILIS, EHAB S. ABU GOSH, INTERNATIONAL ENERGY GOVERNANCE: SELECTED LEGAL ISSUES, pg. 248 (2014)); *See also*: CHRISTIAN ECKART, PROMISES OF STATES UNDER INTERNATIONAL LAW, (2012).

² Monetary gold case, East Timor (Portugal v. Australia), Judgement, I.C.J. Reports 1995, p.101, ¶ 26; Corfu Channel (1948); *See also*: Reparation for injuries suffered in the service of the United Nations, Order of December 11th, 1948, I.C. J. Reports 1948, p. 121; *See also*: Interpretation of Peace Treaties, Order of May 5th, 1950, I.C. J. Reports 1950, p.121; *See also*: Anglo-Iranian Oil Co. Case, Order of August 22nd, 1951: I.C. J. Reports 1951, p. 106; *See also*: Nottebohm case (Preliminary Objection), Judgment of November 18th, 1953: I.C.J. Reports 1953, p.111; Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, Judgment, I.C.J. Reports 1984, p. 3; *See also*: Military and Paramilitary Activities in and against Nicaragua (Nicaragua/U.S.), Merits, 1986 I.C.J. 14; *See also*: Frontier Dispute, Judgment, I.C.J. Reports 1986, p. 554; Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 240 Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 6; *See also*: Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), Judgment, I.C.J. Reports 2008, pg. 177; Shiv R.S. Bedi, The Development of Human Rights Law by The Judges of The International Court, pg. 178 (2007); Robert Kolb, The International Court of Justice, pg.372; *See also*: United Nations, Recueil des arrêts, avis consultatifs et ordonnances, pg. 274 (ed. 2002); *See also*: RAFAEL LEAL-ARCAS, ANDREW FILIS, EHAB S. ABU GOSH, INTERNATIONAL ENERGY GOVERNANCE: SELECTED LEGAL ISSUES, pg. 248; *See also*: MARTIN DIXON, ROBERT MCCORQUODALE, SARAH WILLIAMS, CASES & MATERIALS ON INTERNATIONAL LAW, pg. 668; *See also*: Heike Krieger, East Timor and the International Community: Basic Documents (1996), pg. 404; International Court Of Justice, Summaries Of Judgments, Advisory Opinions, and Orders Of The International Court Of Justice (2013), pg. 221.

³ ICJ Statute, *supra* note 1, art. 38(5); *See also*: HANDBOOK ON ACCEPTING THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE, Chapter-V, ¶ 92.

the case.⁴ Moreover, establishing the jurisdiction of the court without the consent of the parties is an institution unknown either to the statute⁵ or to the Charter of the UN⁶, therefore, the ICJ will lack the jurisdictional basis to address this dispute.⁷ In the *Corfu Channel case*⁸, ICJ found that the consent of a state needs to be voluntary in order to establish that ICJ has jurisdiction⁹.

The nature of this action lies in the freedom of a respondent state to accept it or not¹⁰ – it is under no obligation to do so.¹¹ If states have not given their consent, the court will not exercise its jurisdiction.¹² Aryan does not accept the jurisdiction of a court on the matters which can be resolved through diplomatic means, like in *Corfu Channel Case*¹³, or through negotiation of a special agreement like in *Gabcikovo-Nagymaros Case*¹⁴ or through aggressive act.

The principle of free consent is universal and fundamental rule of international law.¹⁵ Furthermore, a party claiming a defect in its consent to be bound by a treaty must notify the other party of its claim.¹⁶ The notification shall indicate measures proposed to be taken with

⁴ ICJ Statute, *supra* note 1, art. 38(5); *See also*: HANDBOOK ON ACCEPTING THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE, CHAPTER-V, ¶ 92.

⁵ Case of the Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States), Preliminary Question, ICJ Reports 1954, 19, 32. *See also* Case Concerning East Timor (Portugal v. Australia), Judgment, ICJ Reports 1995, 87, 101, ¶ 26; *See also*: STANIMIR A. ALEXANDROV, THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE: HOW COMPULSORY IS IT?

⁶ T. Giegerich, *op. cit.*, pg. 1138.

⁷ Treatment in Hungary of Aircraft and Crew of the United States of America (United States of America v. Hungary); *See also*: Treatment in Hungary of Aircraft and Crew of the United States of America (United States of America v. USSR); *See also*: Aerial Incident of 10 March 1953 (United States of America v. Czechoslovakia); *See also*: Antarctica (United Kingdom v. Argentina); *See also*: Antarctica (United Kingdom v. Chile); *See also*: Aerial Incident of 7 October 1952 (United States of America v. USSR); *See also*: Aerial Incident of 4 September 1954 (United States of America v. USSR); *See also*: Aerial Incident of 7 November 1954 (United States of America v. USSR).

⁸ *Corfu Channel case*, Judgment on Preliminary Objection, I.C. J. Reports 1948, p. 15.

⁹ Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, Z.C.J. Reports 1988, p. 69; Maura A. Bleichert, The Effectiveness of Voluntary Jurisdiction in the ICJ: El Salvador v. Honduras, A Case in Point, 16 FOR. INT'L LAW J. 799 (1992).

¹⁰ S. Rosenne, *op.cit.*, p. 673.

¹¹ *Id.*

¹² Cesare P. R. Romano, International Justice and developing countries, pg. 542; *See also*: RENATA SZAFARZ, THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE (1991); *See also*: ROBERT BECKMAN AND DAGMAR BUTTE, INTRODUCTION TO INTERNATIONAL LAW ROBERT BECKMAN AND DAGMAR BUTTE.

¹³ *Supra* note 8.

¹⁴ *Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, pg. 7.

¹⁵ Preamble, Vienna Convention on the Law of Treaties (1969), 1155 U.N.T.S. 331 [*hereinafter* VCLT]; *See also*: Mark Eugen Villiger, Commentary on The 1969 Vienna Convention on The Law of Treaties (2009), pg.48; Olivier Corten, Pierre Klein, The Vienna Conventions on the Law of Treaties: A Commentary, (Vol. 1 2011), pg. 7.

¹⁶ Preamble, VCLT, *supra* Note 14, art. 65; *See also*: MARTIN DIXON, ROBERT MCCORQUODALE, SARAH WILLIAMS, CASES & MATERIALS ON INTERNATIONAL LAW, (1991), pg. 95; *See also*: LUNG-CHU CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW: A POLICY-ORIENTED PERSPECTIVE, (2000).

respect to the treaty and reasons thereof.¹⁷ This has also been recognized as customary international law [*hereinafter* CIL].¹⁸ Aryan has already notified Marshal that it does not want to be bound with the defective consent.

[1.2] SUBJECT MATTER OF THE DISPUTE DOES NOT ARISE UNDER ARTICLE 4 OF BORTOX AGREEMENT.

The present case has been instituted under Article 36(1) of the ICJ Statute along with Article 4 of the Bortex Agreement [*hereinafter* BA].¹⁹ BA governs all actions, activities and disputes arising between Aryan and Marshal in relation to the Line of Control [*hereinafter* LOC].²⁰ The subject matter or *ratione materiae* of the present dispute is not covered by the BA because the factual and legal questions raised in the present dispute are not defined under the constitutive instrument.²¹

The issue of treatment with Major Dmitri cannot be characterized as matter directly or indirectly linked to or arising out of BA. It is a subject-matter not connected in any way with any of the situations contemplated by the treaties.²² While it is true that the phrase ‘directly or indirectly’ might be capable of a very good interpretation, but this is evidently not the meaning the parties intended it to have.²³

[1.3] EVEN IF THE PRESENT DISPUTE IS COVERED UNDER THE BA, THE TREATY STANDS TERMINATED.

A change of circumstances becomes relevant as it is related to the wills of the parties.²⁴ LOC is formulated as the fundamental basis for the BA. No formula offers a substitute for it, or

¹⁷ MARTIN DIXON, ROBERT MCCORQUODALE, SARAH WILLIAMS, CASES & MATERIALS ON INTERNATIONAL LAW, (1991), pg.95; LUNG-CHU CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW: A POLICY-ORIENTED PERSPECTIVE, (2000).

¹⁸ 1 OLIVIER CORTEN & PIERRE KLEIN, THE VIENNA CONVENTIONS ON THE LAW OF TREATIES: A COMMENTARY, (2011); *See also*: OLIVER DÖRR AND KIRSTEN SCHMALENBACH (EDS.), THE VIENNA CONVENTION ON THE LAW OF TREATIES: A COMMENTARY, (2012); *See also*: MARK EUGEN VILLIGER, COMMENTARY ON THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES, (2009), pg. 1058; *See also*: Christian Djeflal; European Journal of International Law, Volume 24, Issue 4 (2013), pg. 1223.

¹⁹ Moot proposition, ¶ 19.

²⁰ Preamble, BA.

²¹ Yuval Shany, Jurisdiction and Admissibility, OXF. HANDBK. INT’L ADJ. (2013), pg.729.

²² ECJ Case C-259/95 Kremzow (1997) ECR I-2629, ¶ 18-19. ECJ.

²³ International Law Reports, Vol. 132, pg.51.

²⁴ C. Hill, The Doctrine of Rebus Sic Stantibus (Columbia: University of Missouri, 1934); *See also*: Free Zones of Upper Savoy and District of Gex Case: France v. Switzerland; PCIJ, Series A/B, No. 46, (1932) pp. 156-8; Nationality Decrees in Tunis and Morocco, PCIJ, Series B, No. 4 (1923), p. 29 and Fisheries Jurisdiction Case, *supra* n. 87, at p. 18.

points unerringly to what need to be ascertained.²⁵ It is a well-established principle of international law, that a treaty ceases to be binding when the basic condition upon which it is founded have essentially changed.²⁶ Suspension of the convention in such circumstances is the unquestioned right of state adversely affected by such essential change.²⁷ Even if, there are fundamental change of circumstances, Aryan contends that Article 4 of the BA does not apply to the present matter since the LOC as envisaged in the BA does not currently exist.

²⁵ Hyde, international law chiefly as interpreted and applied by US 1524 (2nd Rev. ed. 1945); Oliver J. Lissitzyn, *Treaties and Changed Circumstances (Rebus Sic Stantibus)*, A.M. J. INT'L LAW, Vol. 61, No. 4 (1967), pp. 895-922.

²⁶ VCLT, art. 62; *See also*: Riaz Mohammad Khan, *Pakistan Horizon*, Vol. 26, No. 1 (First Quarter, 1973), pp. 16-28; Krzysztof J. Pelc, *Making and Bending International Rules: The Design of Exceptions and Escape Clauses in Trade Law* (2018), pg.75; *See also*: Robert Cryer, Neil Boister, *Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgement*, (Vol. 1, eds. 2008), pg. 1223; *See also*: David R. Deener, *The United States Attorneys General and international law* (1957), pg. 304; *See also*: Scott Davidson, *The Law of Treaties (The Library of Essays In International Law)* (Vol. 1 ed. 2004); *See also*: Stuart Hull McIntyre, *Legal Effect of World War II On Treaties Of The United States* (1958), pg. 26; *See also*: Ansay, Tugrul, *Recueil des Cours de l'Academie de Droit International de la Haye: Collected Courses of the Hague Academy of Int'l Law* (Vol.146, 1974), pg. 23.

²⁷ Proclamation no. 2500, Aug. 9, 1941, 6 Fed. Reg 3999/ 1941; Document: - A/CN.4/182 and Corr.1&2 and Add.1, 2/Rev.1 & 3, *Law of Treaties: Comments by Governments on the draft articles on the law of treaties*, at its fourteenth, fifteenth and sixteenth session; *See also*: Document:- A/CN.4/94 Report of the International Law Commission Covering the Work of its Seventh Session 2 May - 8 July 1955, *Official Records of the General Assembly, Tenth Session, Supplement No. 9 (A/2934)*; *See also*: Oliver J. Lissitzyn, *Treaties and Changed Circumstances (Rebus Sic Stantibus)*, A.M. J. INT'L LAW, Vol. 61, No. 4 (Oct., 1967), pp. 895-922; David R. Deener, *The United States Attorneys General and International Law* (1957), pg. 304; *See also*: Robert Cryer, Neil Boister, *Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgement*, (vol. 1 eds. 2008), pg. 1223; *See also*: Stuart Hull McIntyre, *Legal Effect of World War II on Treaties of the United States* (1958), pg. 26; *See also*: Krzysztof J. Pelc, *Making and Bending International Rules: The Design of Exceptions and Escape Clauses in Trade Law* (2018), pg.75.

ISSUE-II

[2.] WHETHER THE TREATMENT METED OUT TO MAJOR DMITRI GODMAN IS BEYOND THE SCOPE OF THIS COURT’S JURISDICTION?

The treatment meted out to Major Dmitri Godman [*hereinafter* Godman] is beyond the scope of this court’s jurisdiction because [2.1] Alleged treatment Godman is not a subject matter covered under BA; and [2.2] There is no substantial evidence of treatment meted out to Godman.

[2.1] ALLEGED TREATMENT OF GODMAN IS NOT A SUBJECT MATTER COVERED UNDER BA.

The present case has been founded under Article 36(1) of the ICJ Statute alongside Article 4 of the BA.²⁸ BA only governs actions, activities and disputes which arise between Marshal and Aryan in relation to the LOC.²⁹ The subject matter or *ratione materiae* of the present dispute is not covered by the BA because the factual and legal questions raised in the present dispute are not defined under the constitutive instrument.³⁰

The agreement shall govern all actions, activities and disputes which arise between Marshal and Aryan in relation to the LOC³¹, not the actions which arise because of the LOC. The jurisdiction arises from the BA and the treatment meted out to Godman was a subject not covered under the BA. Therefore, court lacked jurisdiction to entertain Marshal's Application.

[2.2] THERE IS NO SUBSTANTIAL EVIDENCE OF TREATMENT METED OUT TO GODMAN.

Mere presence of Godman’s name tag on top of the chopped up body pieces³² doesn’t prove that the chopped up body pieces was of Major Godman and any kind of consequential inhuman treatment was done with him. There is no substantial evidence of inhuman treatment meted out to Godman. Even if the chopped up body pieces belonged to Godman even then the court doesn’t have jurisdiction to decide over the merits of the inhuman treatment meted out to Godman. In many cases, the accused were acquitted giving the benefit of doubt as the applicant failed to adduce any “substantial evidence”.³³ Similarly, in the present case Marshal has failed to prove that any inhuman treatment was meted out to Godman by the Aryan.

²⁸ Moot Proposition, ¶ 17.

²⁹ Preamble of BA.

³⁰ *Supra* note 20.

³¹ Preamble of BA.

³² Moot proposition, ¶ 14.

³³ The Prosecutor v. Mathieu Ngudjolo Chui, Trial Chamber, (ICC-01/04-02/12, 27 February 2015); *See also*: The Prosecutor v. Callixte Mbarushimana, Pre-Trial Chamber (ICC-01/04-01/10, 23 December 2011); *See also*: Prithipal Singh Etc v. State of Punjab, (2012) 1 SCC 10 (India).

ISSUE-III

[3.] WHETHER PRISONERS OF WAR SHOULD BE RETURNED BACK TO THE ARYAN?

Prisoners of war [*hereinafter* POWs] should be returned back to the Aryan because [3.1] Detainment of POWs is contrary to the Geneva Convention on the treatment of prisoners of war, and [3.2] Consequential inhuman treatment with the POWs is contrary to the Customary International Humanitarian Law.

[3.1] DETAINMENT OF POWS IS CONTRARY TO THE GENEVA CONVENTION ON THE TREATMENT OF POWS.

“Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities”.³⁴ But Marshal refused to return the POWs by stating that these soldiers would be kept in a permanent captivity.³⁵ The war is already over and Marshal emerged victorious in it.³⁶ So, after the cessation of hostilities, according to Art. 118³⁷, Marshal should repatriate all the POWs and by not abiding to the principles of the Geneva Convention, it has breached Art. 118³⁸ and common Art. 1 of the Geneva Convention lays down an obligation to respect and ensure respect for the convention in all circumstances.

The ‘unjustifiable delay in the repatriation of prisoners of war or civilians’³⁹ shall be regarded as grave breach of this Protocol, when committed willfully and in violation of the convention or the protocol.⁴⁰ Therefore, this act of Marshal constitutes a grave breach of Additional Protocol I [*hereinafter* AP I] of Geneva Convention. According to CIHL, “Prisoners of war must be released and repatriated without delay after the cessation of active hostilities”,⁴¹

Hence the act of not repatriating the POWs back to the Aryan, is contrary to the Geneva Convention and CIHL as well.

³⁴ Geneva Convention relative to the Treatment of Prisoners of War of 12 august 1949 [*hereinafter* Third Geneva Convention], art. 118; *See also*: DIETER FLECK, THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS, 731 (2013).

³⁵ Moot Proposition, ¶ 12.

³⁶ Moot Proposition, ¶ 9.

³⁷ Fourth Geneva Convention, *supra* note 32, art. 118.

³⁸ *Id.*

³⁹ 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 [*hereinafter* AP-I], art. 85(4)(b).

⁴⁰ AP-I, art.85(4).

⁴¹ CIHL, Rule 128; Daniel Wisher, Immigration Detention: Law, History, politics (2011).

[3.1.1] POWs are kept in “unlawful confinement”.

‘Arbitrary deprivation of liberty is prohibited’⁴². It should be noted that common art. 3 of the Geneva Convention, as well as AP I, state that all civilians and persons hors de combat be treated humanely and arbitrary deprivation of liberty is contrary to the following convention.⁴³ No concrete ground for the detention of the POWs are given by Marshal. Detention of POWs against the various rules⁴⁴ laid down in the Geneva Convention is referred to as “unlawful confinement”⁴⁵. Therefore, Marshal should release the POWs from its ‘unlawful confinement’.

[3.2] CONSEQUENTIAL INHUMAN TREATMENT WITH THE POWS IS CONTRARY TO THE CUSTOMARY INTERNATIONAL HUMANITARIAN LAW.

Modern international law perceives repatriation as the personal human right of a POW, refugee, or internally displaced person to return to his or her place of origin.⁴⁶ Detaining a person by arbitrarily, denying its liberty is a grave breach of Customary International Humanitarian Law [*hereinafter* CIHL].⁴⁷ Prisoners of war must at all times be humanely treated, and may not be subjected to any physical mutilation.⁴⁸

General Vadim has already given a statement at the UN General Assembly- ‘Every time, we have to tolerate their rubbish. This time, we will make them pay for their sin’.⁴⁹ This statement of General Vadim has indicated that Marshal’s intention is not in a good faith and they could seek revenge from the Aryan and therefore, they are not releasing the POWs.

⁴² CIHL, Rule 99.

⁴³ Common art. 3 of all the Geneva Conventions and AP-1 and 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 [*hereinafter* AP-2].

⁴⁴ Deprivation of liberty by neutral States is governed by Hague Conventions (V) and (XIII), art.11, 13 and 14 of Hague Convention (V) state the grounds for detention of belligerent persons by neutral States; *See also*: Article 24 of Hague Convention (XIII) states the grounds for the detention of belligerent ships, their officers and crew by neutral States; *See also*: 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 [*hereinafter* First Geneva Convention], art. 28, 30 and 32; *See also*: 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 [*hereinafter* Second Geneva Convention], art. 36 and 37; *See also*: Third Geneva Convention, art. 21, 90, 95, 103, 109 and 118; Fourth Geneva Convention, art. 42 & art. 78.

⁴⁵ Elements of Crimes for the UN General Assembly, Rome Statute of the International Criminal Court, 17 July 1998 [*hereinafter* ICC Statute], Definition of unlawful confinement as a war crime (ICC Statute, article 8(2)(a)(vii)).

⁴⁶ Alfred de Zayas, Repatriation, Max Planck Encyclopedia of Public International Law (2011); *See also*: FRANÇOISE KRILL, The ICRC’s policy on refugees and internally displaced civilians by, IRRC (September 2001) Vol. 83 No 843, pp 607.

⁴⁷ *Supra* note 41.

⁴⁸ Third Geneva Convention, art. 13.

⁴⁹ Moot Proposition, ¶ 12.

Later on, General Vadim stated that he was right in doing what he did and he committed to bring Aryan to book.⁵⁰ Marshal's motive is to gain more political influence over Aryan but all the committed acts by Marshal are contrary to the principles of the International law and the treaties and conventions that both states are party to.⁵¹ Aforementioned facts show that Marshal has breached the CIHL, and Geneva Conventions.

[3.2.1] Sizeable number of POWs captured by Marshal would affect the nature of the state.

The large number of POWs captured by Marshal would create public pressure on the Aryan to get those POWs back. Martial law⁵² has been imposed on the Aryan who has never witnessed any military coup⁵³. So, nature of the state has already been changed from being democratic to seeing the army rule. At that point of time, Aryan would be facing much more pressure from the public and has been trying to adapt to the new rules of the new government. Getting back the POWs would be a big relief for the new government as well as the people residing in the Aryan's territory.

⁵⁰ *Ibid* at ¶ 17.

⁵¹ Moot proposition, ¶ 20.

⁵² *Ibid* at ¶ 10.

⁵³ *Ibid* at ¶ 4.

ISSUE-IV

[4] WHETHER ARYAN IS ENTITLED TO APPROPRIATE DAMAGES?

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

[4.1.] ACTS OF 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.⁵⁴

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 State⁵⁵. Sometimes an act can be attributed to the state if it knew or must have known.⁵⁶ States can only act by and through their agents.⁵⁷ Thus the question is who should be considered as acting on behalf of the state.

In the *Rainbow Warrior case*,⁵⁸ the arbitral tribunal stressed, “any violation by a State of any obligation, of whatever origin, gives rise to State responsibility”.⁵⁹ If the legal acts in question are imputable to state, they are regarded as acts attributed to state.⁶⁰ In the present case, acts of taking POW’s capturing civilians, torturing them⁶¹ and denial of consular access⁶² are all internationally wrongful acts which can be attributed to Marshal. Marshal failed to fulfill the obligations under the BA, therefore giving rise to the state responsibility.

Since, Marshal has done consequential inhuman treatment with the captured POWs of the Aryan, Marshal is subjected to pay the damages which are to be calculated based on settled conventions under International law with respect to the loss suffered by Aryan.

⁵⁴ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, art.2

⁵⁵ *Ibid* at art.2 commentary (7).

⁵⁶ *Corfu Channel, United Kingdom v Albania, Judgment, Compensation, (1949) ICJ Rep 244, ICGJ 201 (ICJ 1949), 15th December 1949.*

⁵⁷ *German Settlers in Poland Advisory Opinion of 10 September 1923 (Series B, No. 6), Permanent Court of International Justice [hereinafter PCIJ].*

⁵⁸ *Rainbow Warrior Case (Fr./N.Z.), 82 I.L.C. 499 (1990).*

⁵⁹ *Ibid* at pg. 251, ¶ 75.

⁶⁰ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America V. Iran) Request for The Indication of Provisional Measures Order of 15 December 1979.*

⁶¹ Moot proposition, ¶ 15.

⁶² *Ibid* at ¶ 13.

[4.2] ACTS ARE INTERNATIONALLY WRONGFUL ACT.

Art. 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.⁶³ An internationally wrongful act of a state may consist in one or more actions or omissions or a combination of both.⁶⁴ 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.⁶⁵

The term “international responsibility” covers the new legal relations which arise under international law by reason of the internationally wrongful act of a state.⁶⁶ The content of these new legal relations is specified in part two.⁶⁷ Every internationally wrongful act of a state entails the international responsibility of that state.⁶⁸ In the *Phosphates in Morocco Case*⁶⁹, PCIJ affirmed that when a state commits an internationally wrongful act against another state international responsibility is established “immediately as between the two states”⁷⁰.

ICJ has applied the principle on several occasions, for example in the *Corfu Channel Case*⁷¹, in *The Military And Paramilitary Activities In And Against Nicaragua Case*⁷² and in the *Gab Cikovo-Nagymaros Case*⁷³. The Court also referred to the principle in its advisory opinions on *Reparation for Injuries*,⁷⁴ and on the *Interpretation of Peace Treaties (Second Phase)*⁷⁵, in which it stated that “refusal to fulfill a treaty obligation involves international responsibility”.⁷⁶ Arbitral tribunals have repeatedly affirmed the principle in several cases for

⁶³ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, art. 1.

⁶⁴ Commentary on Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, art. 1.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Supra* note 53, art. 1.

⁶⁸ *Id.*

⁶⁹ *Phosphates in Morocco (Italy v. Fr.)*, 1938 P.C.I.J. (ser. A/B) No. 74 (June 14).

⁷⁰ *Ibid* at pg. 10, at pg. 28; *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.

⁷¹ *Supra* note 56.

⁷² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, I.C.J. Reports 1986, p. 14, at p. 142, para. 283, and p. 149, para. 292.

⁷³ *Supra* note 13, at p. 38, ¶ 47.

⁷⁴ *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion*, I.C.J. Reports 1949, p. 174, at p. 184.

⁷⁵ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second Phase, Advisory Opinion*, I.C.J. Reports 1950, p. 221.

⁷⁶ Article 1, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001.

example in the *claims of Italian nationals resident in Peru cases*⁷⁷; *Dickson Car Wheel Company Case*⁷⁸; *International Fisheries Company (U.S.A.) v. United Mexican States*⁷⁹; *Phosphates in Morocco Case*⁸⁰ and *Armstrong cork company case*. In the *Rainbow Warrior Case*,⁸¹ the arbitral tribunal stressed “any violation by a State of any obligation, of whatever origin, gives rise to State responsibility”.⁸²

According to the arbitrator, it is an indisputable principle that “responsibility is the necessary corollary of rights. All international rights entail international responsibility”.⁸³ 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”.⁸⁴

Thus the term “international responsibility” in art. 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 centered on obligations of restitution or compensation or also give the injured State the possibility of responding by way of countermeasures.⁸⁵

[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.⁸⁶ “Cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment” of civilians, are prohibited.⁸⁷ Torture and cruel treatment are also prohibited by specific provisions of the

⁷⁷ 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” (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), and 411 (Miglia claim)).

⁷⁸ *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).

⁷⁹ *International Fisheries Company (U.S.A.) v. United Mexican States*, *ibid.*, p. 691, at p. 701 (1931).

⁸⁰ *Phosphates in Morocco (Italy v. Fr.)*, 1938 P.C.I.J. (ser. A/B) No. 74 (June 14).

⁸¹ *Rainbow Warrior affair*, UNRIAA, vol. XX (Sales No. E/F.93. V.3), p. 215 (1990).

⁸² *Ibid* at p. 251, para. 75.

⁸³ Max Huber, UNRIAA, vol. II (Sales No. 1949.V.1), p. 615, at p. 641 (1925).

⁸⁴ UNRIAA, vol. XIV (Sales No. 65.V.4), p. 159, at p. 163 (1953).

⁸⁵ *Supra* note 53, art. 1 commentary (5).

⁸⁶ Third Geneva Convention, Art 13.

⁸⁷ Geneva Conventions, Common Article 3.

Geneva Conventions.⁸⁸ In addition, “torture or inhuman treatment” and “willfully causing great suffering or serious injury to body or health” constitute grave breaches of the Geneva Convention and are war crimes under the ICC.⁸⁹ There were evidences of consequential inhuman treatment with the captured POWs of the Aryan. From the above facts, we can establish that Aryan has violated 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.⁹⁰ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁹¹ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.⁹² POWs’ survival and well-being considered as the principal objective of humanitarian rule.⁹³ Marshal has treated POWs inhumanely that has ultimately encroached the right to life and right against torture of the detained POWs.

[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”.⁹⁴ 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.⁹⁵ Marshal army has conducted large scale military operations in the LOC resulting in a full-fledged war within the territory known as the Marshal- Aryan border skirmish⁹⁶ even when it is forbidden under BA Agreement and AP 1. From the above facts it can be established that the Applicant should compensate to Respondent as it violated the BA and AP 1.

⁸⁸ First Geneva Convention, art. 12(2); Second Geneva Convention, art. 12(2); *See also*: Third Geneva Convention, art. 17(4), 87(3) & 89; Fourth Geneva Convention, art. 32.

⁸⁹ First Geneva Convention, art. 50; Third Geneva Convention, art. 130; Fourth Geneva Convention, art.147; ICC Statute, Article 8(2)(A)(II) And (III) And (C)(I).

⁹⁰ International Covenant on Civil and Political Rights [*hereinafter* ICCPR], art. 6.

⁹¹ *Ibid* at art. 7.

⁹² *Ibid* at art. 10.

⁹³ Civilians Claims–Eritrea's Claims 15, 16, 23 and 27-32 (Eritrea v. Ethiopia), Partial Award, Eritrea-Ethiopia Claims Commission (Dec. 17, 2004); ICGJ 354 (PCA 2004).

⁹⁴ BA, art. 3.

⁹⁵ AP 1, art. 60.

⁹⁶ Moot Proposition, ¶ 9.

[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.⁹⁷ There has been a huge monetary loss, especially the money invested on arms and ammunition.⁹⁸ When people are displaced, they cannot continue to work or keep their businesses open which cause damage to the economy of countries involved.⁹⁹ In addition, moral injury¹⁰⁰ suffered by the victim and their families for which Marshal is asking for pecuniary compensation. The widespread trauma caused by the atrocities caused by the war and suffering of the civilian population is another legacy of these conflicts, and moreover it creates extensive emotional and psychological stress.¹⁰¹

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

The internal disturbance in the law and order within the territory of the Aryan because of the full-fledged war.¹⁰² The citizens had to suffer, also because approx. 100 civilians were captured by the Marshal.¹⁰³ 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 cannot be compensated in the form of restitution. The compensation shall cover all the financial assessable damages including loss of profits insofar as it is established.¹⁰⁴ In *Eritrea v. Ethiopia case*¹⁰⁵, the commission awarded compensation for mental and emotional harm suffered by the POWs.¹⁰⁶ Hence, Aryan is entitled to get reparations for the damages suffered by their government, their people, property, and economy.

⁹⁷ Tejvanpettinger, *Economic Impact of War*, (March 31, 2017), www.economicshelp.org.

⁹⁸ Moot Preposition, ¶ 5

⁹⁹ The Institute for Economics and Peace, *The Economic Costs of Violence and Containment*.

¹⁰⁰ ILC Articles on State Responsibility, art. 36, Op. Cit. (Note 1).

¹⁰¹ "Impact of Armed Conflict On Children". *United Nations Report*. New York. 1996.

¹⁰² Moot Preposition, ¶ 9

¹⁰³ *Ibid* at ¶ 10.

¹⁰⁴ Draft articles on Responsibility of States for Internationally Wrongful Acts, Art. 36.

¹⁰⁵ *Supra* Note 87.

¹⁰⁶ *Ibid* at Eritrea's Damages Claims, at p. 230, 238.

ISSUE-V

[5.] WHETHER MARSHAL HAS VIOLATED INTERNATIONAL LAW BY DENYING CONSULAR ACCESS TO MR. ALEX?

Marshal has violated international law by denying consular access to Mr. Alex because [5.1] Mr. Alex is a national of Aryan; [5.2] Consular officer of Aryan has a right to access Mr. Alex; and [5.3] Denial of consular access to Mr. Alex has violated customary International Law.

[5.1] MR. ALEX IS A NATIONAL OF ARYANS.

In the present case, it is stated that Marshal agreed to release the civilians¹⁰⁷ except one namely Mr. Alex, whom they claimed was being detained on the charges of espionage as he belonged to the Aryan secret service.¹⁰⁸ It is clearly mentioned in the facts that Mr. Alex is the civilian of the Aryan¹⁰⁹. Therefore Mr. Alex is a national of the Aryan. In the *Jadhav's case*¹¹⁰, India received another Note Verb ale on 21 March 2017 from Pakistan. In this, Pakistan stated that, "the case for the consular access to the Indian"¹¹¹

In the *Case Of Paraguay v. United State Of America*¹¹², Mr. Breard was a Paraguayan national and Paraguayan and consular officers immediately began rendering assistance to Mr. Breard.¹¹³ In the *LaGrand Case*¹¹⁴, Germany had asserted rights on behalf of its nationals.¹¹⁵ As in the *LaGrand Case*¹¹⁶, the court gave the judgment that the Court cannot accept the United States objections.

The dispute between the Parties as to whether Article 36, paragraph 1 (a) and (c), of the Vienna Convention on Consular relations [*hereinafter* VCCR] have been violated in this case in consequence of the breach of paragraph 1 (b) does relate to the interpretation and application of the Convention. This is also true of the dispute as to whether paragraph 1 (b) creates individual rights.¹¹⁷ This fact does not prevent a State party to a treaty, which creates individual rights, from taking up the case of one of its nationals and instituting international judicial proceedings on behalf of that national, on the basis of a general jurisdictional clause

¹⁰⁷ AP 1, art. 50;

¹⁰⁸ Moot proposition, ¶ 12

¹⁰⁹ *Id.*

¹¹⁰ The Jadhav Case (India v. Pakistan), Verbatim Record (2017), ¶ 73.

¹¹¹ *Ibid.*

¹¹² Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America), Verbatim Record, 98/22, International Court of Justice (ICJ), 9 June 1998.

¹¹³ *Id.*

¹¹⁴ LaGrand (Germany v. United States of America), Judgement, I. C. J. Reports 2001, p. 466.

¹¹⁵ *Ibid* at ¶ 42.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

in such a treaty.¹¹⁸ Therefore, from the above facts and case it is legally proved that every national has the right to access consular access under article 36(1)(c).¹¹⁹ Aryan has the right to consular access to Mr. Alex being the national of the country. Hence, Marshal has to grant consular access to Mr. Alex under article 36(1)(c) of VCCR.

[5.1.1] Mr. Alex has the right to consular access by the virtue of his nationality.

VCCR art. 36(1)(c) says that, consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment.¹²⁰ In this case, Mr. Alex. was detained by Marshal,¹²¹ later a repeated request from Aryan to Marshal to allow consular access to Mr. Alex were denied by the Marshal.¹²² In accordance with art. 36(1) of the VCCR, Aryan has right to consular access and right to send consular officer to converse with him, and to arrange for his legal representation.¹²³ As held by this Court in *Avena case*¹²⁴, “violations of the rights of the individual under Article 36 may entail a violation of the rights of the sending State, and that violations of the rights of the latter may entail a violation of the rights of the individual”.¹²⁵ In the *LaGrand case*¹²⁶, the German claim that the individual's rights to be informed without delay of his rights, is not only an individual right but even a human right.¹²⁷ There is a duty upon the arresting authorities to give the information as soon as it is realized that the person is a foreign national or once there are grounds to think that the person probably is a foreign national.¹²⁸ Therefore, in the present case, Mr. Alex has the right to consular access by virtue of his nationality.¹²⁹

¹¹⁸ LaGrand (Germany v. United States of America), Judgement, I. C. J. Reports 2001, p. 466.

¹¹⁹ VCCR, art. 36(1).

¹²⁰ *Id.*

¹²¹ Moot proposition, ¶ 12.

¹²² *Id.* at ¶ 13.

¹²³ Draft Articles on Consular Relations, with commentaries 1961, art. 36, commentary 4(c).

¹²⁴ Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I. C. J. Reports 2004, p. 12.

¹²⁵ *Ibid* at p.36, ¶ 40.

¹²⁶ *Supra* note 108.

¹²⁷ T. J. A. Schillings, Article 36 of The Vienna Convention on Consular Relations, INT. & EU. LAW, University of Tilburg (2016), pg. 55.

¹²⁸ *Supra* note 121, pg. 58.

¹²⁹ *Supra* note 108, ¶ 42.

[5.1.2] Mr. Alex has inherent right to life.

Art. 6 of ICCPR recognizes that no one shall be arbitrarily deprived of his life.¹³⁰ The European Court of Human Rights [*hereinafter* ECHR] has held that returning a person to a situation of indiscriminate violence intense enough to pose a real risk to the life of any civilian would amount to inhuman and degrading treatment in violation of art. 3 of the ECHR¹³¹. The right to life is recognized as a rule of customary international law.¹³²

According to the International American Court of Human Rights, States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life, and must exercise due diligence in the prevention of such a violation¹³³. In this case, Mr. Alex, who is detained on the charges of espionage,¹³⁴ has inherent right to life, which shall be protected by the law because he is a human being and every human being has the inherent right to life.¹³⁵ Hence, the act of denial of consular access to Mr. Alex by Marshal has violated the right to life of Mr. Alex and violated ICCPR.¹³⁶

[5.1.3] Mr. Alex has the right to liberty and security of his life.

Art. 9 of ICCPR recognize that no one shall be subjected to arbitrary arrest or detention.¹³⁷ The right to life overlaps with the right to personal security,¹³⁸ especially with regard to injuries or extreme forms of detention that are life-threatening¹³⁹. The protection of the civilian population and civilian objects is further underpinned by the requirement that all parties to a conflict take precautions in attack, and in defence.¹⁴⁰ In the present case, the detention of Mr. Alex is arbitrary¹⁴¹ in nature because he was a civilian¹⁴² and he was detained on the suspicion on being espionage¹⁴³ without any substantial evidence. The

¹³⁰ ICCPR, art. 6.

¹³¹ *Sufi and Elmi v. United Kingdom*, App. Nos. 8319/07, 11449/07, ¶241, Eur. Ct. H.R. (2011); *See also: L.M. v. Russia*, App. Nos. 40081/14 et al., paras. 119-126, Eur. Ct. H.R. (2015).

¹³² Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the General Assembly, A/67/275, para. 105.

¹³³ *Inter-American Court of Human Rights, Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of 5 July 2006, ¶66; *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), ¶ 172.

¹³⁴ Moot proposition, ¶ 12.

¹³⁵ *Supra* note 124.

¹³⁶ Moot proposition, ¶ 20.

¹³⁷ ICCPR, art. 9.

¹³⁸ *Id* at art. 9(1).

¹³⁹ Human Rights Committee, General Comment 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, ¶ 55.

¹⁴⁰ CIHL, rule 15.

¹⁴¹ Human Rights Watch, reports 2008.

¹⁴² Moot preposition, ¶ 12.

¹⁴³ *Id*.

repeated requests by the Aryan to Marshal to have consular access to Mr. Alex, were denied¹⁴⁴ which has deprived the right to liberty and security¹⁴⁵ of Mr. Alex. Hence, this act of Marshal has violated Customary International Law on Diplomatic Relation¹⁴⁶.

[5.2] CONSULAR OFFICER OF ARYAN HAS A RIGHT TO ACCESS MR. ALEX.

Article 36(1)(c) of VCCR states that Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.¹⁴⁷

In 1985, a UN General Assembly Resolution recognized an alien's right to communicate with their consulate.¹⁴⁸ The receiving State must permit the consular official to visit a national of the sending State who is in custody, prison or detention in his consular district, to converse with him, and to arrange for his legal representation.¹⁴⁹ The consular officers have rights to visit a national in prison and to converse and correspond with him.¹⁵⁰

In the present case, Mr. Alex who has been detained by the Marshal¹⁵¹ even after the repeated requests from Aryan to Marshal to have consular access to Mr. Alex were denied.¹⁵² Therefore, from the above fact it is clearly mentioned that the consular officer of Aryan has a complete right to consular access to Mr. Alex¹⁵³ and also, because Mr. Alex has not expressly opposed the consular access.¹⁵⁴

¹⁴⁴ *Id* at ¶ 13.

¹⁴⁵ *Supra* note 131.

¹⁴⁶ Vienna Convention on Diplomatic Relations [*hereinafter* VCDR] (1964), 500 U.N.T.S. 95.

¹⁴⁷ *Supra* note 113, art. 36(1)(c).

¹⁴⁸ Declaration on the human rights of individuals who are not nationals of the country in which they live, General Assembly resolution 40/144, 116th plenary meeting, UN Doc A/RES/40/144 (13 December 1985), art 10.

¹⁴⁹ *Supra* note 117.

¹⁵⁰ *Supra* note 121, at pg. 60.

¹⁵¹ Moot proposition, ¶ 12.

¹⁵² *Id* at ¶ 13.

¹⁵³ *Supra* note 113.

¹⁵⁴ *Id*.

[5.3] DENIAL OF CONSULAR ACCESS TO MR. ALEX HAS VIOLATED CUSTOMARY INTERNATIONAL LAW.

The VCCR to a large extent codified customary international law and thus represents the most basic principles pertaining to the performance of consular functions.¹⁵⁵ The United States still looks to customary international law as a basis for insisting upon adherence to the right of consular notification.¹⁵⁶

Article 46(2) of AP 1 states that, ‘a member of the armed forces of a Party to the conflict who, on behalf of that Party and in territory controlled by an adverse Party, gathers or attempts to gather information shall not be considered as engaging in espionage if, while so acting, he is in the uniform of his armed forces’.¹⁵⁷

It was never stated in the facts that Mr. Alex was engaged in gathering information against Marshal in the uniform of his armed force. Facts clearly state that Mr. Alex is a civilian¹⁵⁸ who has been captured by the Marshal as the result of war.¹⁵⁹ Therefore, from the above mentioned facts we can therefore establish that there is no substantial proof that Mr. Alex is an espionage. Hence, the denial of consular access to Mr. Alex has violated CIL.

¹⁵⁵ Consular Notification and Access, January 1998, Part Five: Legal Material.

¹⁵⁶ *Id.*

¹⁵⁷ AP 1, art. 46(2).

¹⁵⁸ *Supra* note 101.

¹⁵⁹ Moot proposition, ¶ 10.

PRAYER FOR RELIEF

For the foregoing reasons, Aryan respectfully requests that this Court:

- Declare that the ICJ does not have the jurisdiction to determine the matter and the treatment meted out with the Major Dmitri Godman is beyond the scope of this court's jurisdiction.
- In the event that this Court is pleased to assume jurisdiction over the said dispute, declare that the Prisoners of War should be returned back to the Aryan.
- Aryan is entitled to appropriate damages from the Marshal.
- Marshal has violated International Law by denying consular access to Mr. Alex.

Respectfully Submitted,
Agents for the Aryan.