
THE 2000 ASIA CUP INTERNATIONAL LAW
MOOT COURT COMPETITION*

IN THE INTERNATIONAL COURT OF JUSTICE AT THE PEACE PALACE,
THE HAGUE, THE NETHERLANDS

CASE CONCERNING THE EXTRADITION OF TERRORISTS

THE STATE OF VERD
APPLICANT

v.

THE STATE OF ORDINA
RESPONDENT

2000

On Submission to the International Court of Justice

MEMORIAL FOR THE APPLICANT,
THE STATE OF VERD

* The Asia Cup is sponsored by The Society for Promotion of Japanese Diplomacy. Asia Cup 2000 was held in Tokyo on August 26-27, 2000. In that year, the champion of the Asia Cup Moot Court Competition was the U.P Asia Cup Team, composed of Jason J. Alba, Rommel J. Casis, Maria Tanya Karina A. Lat, and Mona Francesca W. Katigbak.

TABLE OF CONTENTS

STATEMENT OF JURISDICTION	127
STATEMENT OF FACTS.....	127
CLAIMS	128
SUMMARY OF PLEADINGS	129
PLEADINGS AND AUTHORITIES.....	130
I. THE EXTRADITION OF THE ESPEL HIJACKERS IS A SOVEREIGN RIGHT AND OBLIGATION OF THE GOVERNMENT OF VERD.	130
A. Verd has the obligation to honor the Treaty on Extradition that it has concluded with Espel.	130
B. Verd has the option to decide whether to extradite or prosecute under the principle of <i>aut dedere aut judicare</i>	131
C. It is Verd's determination that Espel is in the best position to properly prosecute the offenders for the crime of aerial hijacking.....	132
II. THERE ARE NO LIMITATIONS ON VERD'S SOVEREIGN RIGHT TO EXTRADITE IN THE CASE AT BAR.	132
A. Under international law, aerial hijacking cannot be characterized as a political offense.	133
B. Assuming <i>arguendo</i> that aerial hijacking can be considered a political offense, the facts in the case at bar do not fulfill the requirements of any of the tests for determining a political offense.	134
1. Under the Anglo-American "incidence" test, the Espel hijacking cannot be considered a political offense.	134
2. Under the French "objective" test, the Espel hijacking does not constitute a political offense.	136
3. Under the Swiss "political motivation balancing" test, the Espel hijacking does not constitute a political offense.	137
C. The Refugee Convention does not apply.	138
D. The International Covenant on Civil and Political Rights does not limit Verd's right to extradite.....	139
III. ORDINA'S THREAT OF ECONOMIC SANCTION SHOULD VERD PROCEED WITH EXTRADITION CONSTITUTES AN ACT OF INTERFERENCE WHICH IS A VIOLATION OF INTERNATIONAL LAW.....	140
CONCLUSION AND PRAYER FOR RELIEF.....	141

STATEMENT OF JURISDICTION

VERD SUBMITS THIS DISPUTE BEFORE THE HONORABLE COURT IN ACCORDANCE WITH ARTICLE 40, PARAGRAPH 1, OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE. VERD PRESENTS THE QUESTIONS CONTAINED IN THE COMPROMIS AND REQUESTS THIS COURT TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THIS DISPUTE.

STATEMENT OF FACTS

In the morning of January 20, 2000, while an Espel aircraft was on a domestic flight, three persons among the passengers suddenly entered the cockpit and threatened the pilot of the plane with a knife (Compromis [hereinafter, C.], 1). They ordered the pilot to follow their demands which were as follows: first, that the government of Espel should release certain members of a political group who were serving sentences after conviction of treason against the state (C. 1); and second, that the aircraft be diverted from its course and land in Ordina (C. 1). The pilot transmitted the first demand to the government of Espel (C. 1). However, the plane did not contain enough fuel to continue its voyage to Ordina (C. 1). The three hijackers, nationals of Espel, agreed instead to land the plane in Verd (C. 2).

Upon arrival in Verd, the Verd authorities immediately took steps to negotiate for the release of the hostages on board the aircraft, which included the pilot, the flight crew, and the rest of the passengers of the plane (C. 2). Verd police surrounded the aircraft, with the authority to use all necessary measures to rescue the passengers (C. 2, C., Supplementary Explanation, C. 1). After two hours of negotiations, during which the pilot continued to be threatened at knifepoint (C. 2; C, Supplementary Explanation, C. 2), the three hijackers agreed to release the hostage passengers (C. 2). However, they persisted in their demand to fly the plane to Ordina. After the safe release of the hostages, Verd policemen entered the aircraft, arrested the three terrorists, and rescued the pilot (C. 2). During the arrest, the pilot was wounded with a knife (C. 2). After the three hijackers had been arrested, Ordina protested, although admitting that it had no jurisdiction over the matter (C. 3).

A Treaty on Extradition has been concluded between Espel and Verd, according to which each State is obliged to extradite offenders sought by the other Party for prosecution (C. 3). Pursuant to this Extradition Treaty, Espel requested

that the three criminals be delivered to it for prosecution under Espel municipal law (C. 4). After proper extradition proceedings had been concluded, the Verd district court, in concurrence with Verd's Foreign Minister, decided in favor of extradition of the three hijackers (C. 4). This decision was based on Verd's Extradition Law, as well as the other international agreements to which Verd is a party, such as the Chicago Convention of Civil Aviation, the Convention on Offenses and Certain Other Acts Committed On Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft, and the Convention for the Suppression of Unlawful Acts Against Civil Aviation (C. 3-4).

Ordina immediately protested the decision of the government of Verd, claiming that Verd should have transported the three hijackers to Ordina, because Ordina authorities would be able to determine a "solution from a political as well as a legal standpoint" better than the governments of either Verd or Espel (C. 5-6). Barring transportation to Ordina, the Ordina government demanded that Verd should institute criminal proceedings itself, instead of merely extraditing the three hijackers to Espel (C. 6). Verd, in response, contended that the three hijackers were criminals who committed an international crime of terrorism (C. 7). It also relied on the Extradition Treaty as a source of its obligation to deliver the three criminals to Espel (C. 7-8).

Despite having no connection whatsoever with the hijacking incident (C., generally), Ordina continued to demand the non-extradition of the three offenders. Ordina warned Verd that extradition of the offenders to Espel would affect economic relations between Ordina and Verd (C. 8). Verd understood this warning to mean that the operation of enterprises of Verd would be handicapped in Ordina by the suspension of the application of agreements on economic cooperation between the two countries (C. 8). Fearing economic repercussions, Verd submitted the matter to the International Court of Justice for adjudication (C. 8-9). Both parties agreed to abide by the ruling of the Court (C. 9).

CLAIMS

I

VERD HAS THE SOVEREIGN RIGHT AND OBLIGATION TO
EXTRADITE THE THREE HIJACKERS TO ESPEL.

II

THERE ARE NO LIMITATIONS ON VERD'S SOVEREIGN RIGHT
TO EXTRADITE IN THE CASE AT BAR.

III

ORDINA'S THREAT OF ECONOMIC SANCTION SHOULD VERD
PROCEED WITH EXTRADITION CONSTITUTES AN ACT OF
INTERFERENCE IN VIOLATION OF INTERNATIONAL LAW.

SUMMARY OF PLEADINGS

The extradition of the Espel hijackers is a sovereign right and obligation of the government of Verd. Verd and Espel are parties to a Treaty on Extradition, under which Verd has the obligation to return offenders to Espel upon request of that State. Given that the conditions under the Treaty on Extradition have all been met, Verd has the obligation to comply with the Treaty, under the generally accepted principle of *pacta sunt servanda* which has been enshrined in the Vienna Convention on the Law of Treaties.

The sole exception to the Extradition Treaty is if extradition is sought in connection with a political offense. Under any relevant standard, the three persons must be considered common criminals who have committed the common crime of hijacking, regardless of any political motivations that may have prompted the commission of the crime. Thus, the political offense exception is not applicable in the case at bar, and Verd would be in breach of its international obligations should it fail to extradite the three hijackers.

Further, under the Hague and Montreal Conventions, Verd is given the option to extradite hijackers or to prosecute them under Verd municipal law. The decision as regards which of these alternative obligations to take is the sole prerogative of Verd, in exercise of its sovereignty. It is a fundamental principle in international law that the sovereign power of a State is limited only by its international obligations, and Verd has no such limitations with regard to its right to extradite the three offenders. International human rights conventions, particularly the International Covenant on Civil and Political Rights and the Convention Relating to the Status of Refugees, do not limit Verd's sovereign power to make the determination that extradition is warranted in this case.

Since the decision to extradite the offenders is the sovereign right of Verd, no other State may interfere with the exercise of this power. By threatening Verd with economic sanctions should it proceed with extradition, Ordina has violated its obligation as a member of the United Nations to refrain from interfering with the internal and external affairs of sovereign and co-equal States. For its breaches of international law, Ordina should be held liable, and should be ordered to immediately refrain from further acts of interference.

PLEADINGS AND AUTHORITIES

I. THE EXTRADITION OF THE ESPEL HIJACKERS IS A SOVEREIGN RIGHT AND OBLIGATION OF THE GOVERNMENT OF VERD.

A. VERD HAS THE OBLIGATION TO HONOR THE TREATY ON EXTRADITION THAT IT HAS CONCLUDED WITH ESPEL.

A Treaty on Extradition (hereinafter, the Extradition Treaty) has been concluded between Verd and Espel (C. 3). Under this Extradition Treaty, Verd has the obligation to extradite persons to Espel, upon its request, provided that certain conditions have been met (Article 1, Extradition Treaty, C. 3). In the case at bar, Espel is seeking the extradition of three of its nationals who hijacked an Espel-registered aircraft on a domestic flight, which was forced to land in Verd. All three of the conditions for extradition under the treaty are satisfied in the case at hand. First, the offenders are clearly found in Verd's territory (C. 2, 3, 4 *et. seq.*). Second, Espel has specifically requested the extradition of the three hijackers for trial under Espel domestic law (C. 4). Finally, the offense of hijacking, for which extradition is sought (C. 4), is punishable with life imprisonment in both Verd and Espel (C., Clarifications, B. 3), satisfying the principle of double criminality.

Under the principle of *pacta sunt servanda*, which is a norm of customary international law and a recognized general principle of law¹ codified in the Vienna Convention on the Law of Treaties,² Verd is obligated to comply with and perform all of its obligations under the Extradition Treaty in good faith.

**B. VERD HAS THE OPTION TO DECIDE WHETHER TO
EXTRADITE OR PROSECUTE UNDER THE PRINCIPLE OF *AUT
DEDERE AUT JUDICARE***

Under the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (hereinafter, the Montreal Convention)³ and the Convention for the Suppression of Unlawful Seizure of Aircraft (hereinafter, the Hague Convention),⁴ to which both Espel and Verd are parties and which characterize aerial hijacking as an extraditable offense,⁵ two options are provided for the State in which hijackers may be found: it may opt to extradite these persons⁶ or it may opt to submit the case to its competent authorities for the purpose of prosecution.⁷ The decision as regards whether or not to extradite offenders is a sovereign decision of the requested State.⁸ Upon consideration by the competent authorities, in accordance with its Extradition Law, the State of Verd has made the sovereign decision to extradite the offenders (C. 4).

¹ See P.K. MENEN, THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATION 55 (1994).

² Vienna Convention on the Law on Treaties, May 23, 1969, art. 26, 1155 U.N.T.S. 331.

³ September 23, 1971, 24 U.S.T. 564.

⁴ December 16, 1970, 22 U.S.T. 1641.

⁵ Montreal Convention, art. 8; Hague Convention, art. 8.

⁶ Hague Convention, art. 6, and 7; Montreal Convention, art. 7.

⁷ Hague Convention, art. 7; Montreal Convention, art. 7.

⁸ Lockerbie Case (Libya v. U. S.), April 14, 1992, 1992 I.C.J. 114 (Provisional Measures);; Asylum Case (Colom. v. Peru), Nov. 27, 1950, 1950 I.C.J. 266.

C. IT IS VERD'S DETERMINATION THAT ESPEL IS IN THE BEST POSITION TO PROPERLY PROSECUTE THE OFFENDERS FOR THE CRIME OF AERIAL HIJACKING.

A Verd district court, and Verd's Foreign Minister, has determined that Espel is in the best position to properly prosecute the offenders for the crime of aerial hijacking (C. 4). This determination was made on the basis of the fact that Espel has the most numerous and direct legal links to the hijacking incident, to wit: Espel is the state of registration of the aircraft (C. 1); Espel is the state of nationality of all the offenders (C. 2); and Espel is the state of nationality of all the victims of the offense (C. 2). In contrast, the only legal nexus between the hijacking incident and Verd is the fact that the plane landed in Verd territory (C. 2). Ordina, on the other hand, has absolutely no legal nexus with the hijacking incident; it did not even have any nationals on board the plane, and thus cannot even claim jurisdiction over the offense on the basis of the passive personality principle.⁹

Since Espel is the state that has the strongest interest in prosecuting the offenders, under the protective principle enshrined in international law,¹⁰ Verd's decision to extradite the offenders to Espel was a reasonable exercise of its sovereignty.

II. THERE ARE NO LIMITATIONS ON VERD'S SOVEREIGN RIGHT TO EXTRADITE IN THE CASE AT BAR.

In order to question Verd's exercise of sovereignty, there must be a clear showing of international obligations that limit Verd's sovereign rights,¹¹ whether arising from treaty or custom.¹² It is a fundamental principle in international law, connected with the sovereignty of States, that States may engage in whatever

⁹ U.S. v. Yunis, 681 F. Supp. 896, *reprinted in* 83 AM. J. INT'L L. 94 (D.D.C., 1989)

¹⁰ See, e.g., *Liansiriprasert v. Government of the United States*, 3 W.L.R.-P.C. 606 (1990).

¹¹ *Cofu Channel Case* (U.K. v. Alb.), April 9, 1949, 1969 1 C.J. 4, at 35.

¹² IAN BROWNIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 288 (4th ed. 1990).

activity not prohibited by international law.¹³ In the case at bar, there are no limitations on Verd's sovereign right to extradite.

**A. UNDER INTERNATIONAL LAW, AERIAL HIJACKING
CANNOT BE CHARACTERIZED AS A POLITICAL OFFENSE.**

Under the Extradition Treaty, the only circumstance under which Verd may refuse to comply with its obligation to extradite is if such extradition is sought in connection with a political offense (Article 3, Extradition Treaty, C. 3). The Extradition Treaty does not define what may constitute a political offense (Article 3, Extradition Treaty, C. 3); nor is there any customary norm of international law which prescribes a standard to be used for determining whether or not an offense is political in nature.¹⁴ However, various international instruments exclude the offense of hijacking from the political offense exception to extradition.

The act of hijacking, whether or not coupled with a political motive, is defined unequivocally as an extraditable offense in both the Hague Convention¹⁵ and the Montreal Convention.¹⁶ Clearly, the political offense exception is unavailing if the offense for which extradition is sought is defined under either of the two Conventions. Moreover, under Art. 2 of the Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963 (hereinafter, Tokyo Convention),¹⁷ hijacking is necessarily excluded from the political offense exception since it always involves the safety of the aircraft and the persons and property on board.¹⁸ A General Assembly Resolution on "Aerial Hijacking or Interference with Civil Aircraft", passed on 25 November 1970,¹⁹ condemned *without exception* whatsoever all acts of aerial hijacking or other interference with

¹³ Case Concerning the S.S. Lotus (Fr. v. Turk.), Sept. 7, 1927, 1927 P.C.I.J. (ser. A/B) No. 10.

¹⁴ Historically, the sole offenses that have been considered as purely political have been limited to treason, sedition and espionage. See Harvard Research in International Law, *Extradition*, 29 AM. J. INT'L. L. SUPP. 66, 110 (1935). The German Extradition Law of December 23, 1920, is the only law that has ever attempted a definition of political offense.

¹⁵ Hague Convention, art. 8.

¹⁶ Montreal Convention, art. 8.

¹⁷ September 14, 1963, 704 U.N.T.S. 219.

¹⁸ S.K. AGRAWALA, AIRCRAFT HIJACKING AND INTERNATIONAL LAW 45 (1973).

¹⁹ G.A. Res. 2645, U.N. GAOR, 25th Sess., The Resolution was passed by 108 votes in favor, none against, and with 8 abstentions.

civil air travel, whether originally national or international, through the threat or use of force. In addition, the European Convention on the Suppression of Terrorism provides that the offenses defined in the Hague Convention and the Montreal Convention shall not "be regarded as a political offense, an offense connected with a political offense, or as an offense inspired by political motives".²⁰ Given the foregoing, it is thus clear that aerial hijacking will *always* be denied the benefits of political offense status.²¹

**B. ASSUMING *ARGUENDO* THAT AERIAL HIJACKING CAN BE
CONSIDERED A POLITICAL OFFENSE, THE FACTS IN THE
CASE AT BAR DO NOT FULFILL THE REQUIREMENTS OF ANY
OF THE TESTS FOR DETERMINING A POLITICAL OFFENSE.**

In practice, the characterization of an offense as 'political' is left to the authorities of the State from which extradition is requested.²² Municipal courts have traditionally relied on three tests to determine whether an act constitutes a political offense: the Anglo-American 'incidence' test, the French 'objective' test, and the Swiss 'political motivation balancing' test. Assuming *arguendo* that aerial hijacking may in certain instances be characterized as a political offense, the Espel hijacking does not fulfill the criteria of any of the three tests.

**1. Under the Anglo-American "incidence"
test, the Espel hijacking cannot be
considered a political offense.**

The classic definition of a political offense under Anglo-American law uses the "incidence" test, under which an offense is considered political if it can be shown that "the act is done in furtherance of, done with the intention of assistance, as a sort of overt act in the course of acting in a political manner, a political rising, or a dispute between the two parties in the State as to which is to

²⁰ European Convention on the Suppression of Terrorism, Nov. 10, 1976, art. 1, Europ. T.S.No. 90, reprinted in 15 I.L.M. 1272 (1976) (entered into force, Aug. 4, 1978)

²¹ M. R. Littenberg, *The Political Offense Exception: An Historical Analysis and Model for the Future*, 64 TUL. L. REV. 1195, 1200 (1990). See, also, M.C. BASSIOUNI, *The Political Offense Exception in Extradition Law and Practice*, in *TERRORISM AND POLITICAL CRIMES* 398, 434-43 (1975).

²² *Watin v. Ministere Public Federal*, ATF 90 I 298, translated and summarized in 72 INT'L L. REP. 614 (Swit.); G. S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 59 (2nd ed. 1996).

have the government in its hands.”²³ Under this test, one may not automatically assume that any and all atrocities, if politically motivated, automatically fall within the “political offense” exception,²⁴ which cannot apply to “political acts that involve less fundamental efforts to accomplish change or that do not attract sufficient adherents to create the necessary amount of turmoil,” or to common crimes which are merely tenuously connected to a political disturbance.²⁵ In order to show that an offense is political in nature, it is necessary to fulfill three essential requisites. First, there must be a certain level of violent disturbance within a State,²⁶ such as a war, revolution or rebellion.²⁷ Second, the offense in question must be performed by those who engage in that violence, who seek to accomplish a particular political objective,²⁸ such as accomplishing political change by violent means or by repressing violent political opposition.²⁹ Finally, the offense in question must be committed in the course of, and merely incidental to, the violent political disturbance.³⁰

These three requisites have not been met in the case at bar. Whereas Espel is a politically and economically unstable country (C., Supplementary Explanation, E. 3), and there have been large-scale anti-government demonstrations and terrorist acts therein (C., Clarifications, E. 3), there is no showing of a connection between these anti-government acts and the hijacking incident on 20 January 2000. Further, there is no showing that the purported offenders sought to accomplish a particular political objective, and that their acts of violence were done merely in the course of, or incidental to, the political

²³ *In re Castioni* 1 Q.B. 149, 156, 159 (1891) (U.K.). The “incidence” test was first defined in this case. *Castioni* is the source of the “incidence” test adopted in British and American jurisprudence. See, also, *In re Ezeta*, 62 F. 972 (N.D.Cal., 1894), and *Quinn v. Robinson*, 783 F. 2d 776, 792-803.

²⁴ *In the Matter of the Requested Extradition of Joseph Patrick Thomas Doherty by the Government of the United Kingdom of Great Britain and Northern Ireland*, 599 F. Supp. 270 (S.D.N.Y., 1984).

²⁵ *Quinn*, 783 F.2d 776, 807, 809. See, also, *Ornelas v. Ruiz*, 161 U.S. 502, 511, 16 S.Ct. 689, 692, 40 L.Ed. 787 (1896); *Koskotas v. Roche and Others*, 931 F.2d 169 (1991).

²⁶ *Quinn*, 783 F.2d 776, 897; See, also, *Escobedo v. United States*, 623 F.2d 1098, 1104, (5th Cir.), cert. denied, 449 U.S. 1036, 101 S.Ct. 612, 66 L.Ed.2d 497 (1980).

²⁷ *Eain v. Wilkes*, 641 F.2d 504, 518 (7th Cir.), cert. denied, 454 U.S. 894, 102 S.Ct. 390, 70 L.Ed.2d 208 (1981); *Escobedo*, 623 F.2d 1098, 1104; *Sindona v. Grant*, 619 F.2d 167, 173 (2d Cir. 1980); *In re Ezeta*, 62 F. 972, 977-1002 (N.D. Cal., 1894).

²⁸ *Quinn*, 783 F.2d 776, 897; see, also, *Escobedo*, 623 F.2d 1098, 1104.

²⁹ *Koskotas v. Roche and Others*, 931 F.2d 169 (1991).

³⁰ *Eain*, 641 F.2d 504, 518; *Escobedo*, 623 F.2d 1098, 1104; *Sindona*, 619 F.2d 167, 173; *Ezeta*, 62 F. 972, 977-1002.

disturbance in Espel. The fact that the hijackers demanded the release of persons convicted of the crime of treason (C. 1; C., Supplementary Explanation, D. 2), is not sufficient to transform the common crime of hijacking (C., Supplementary Explanation, B. 3) into a political offense exempt from extradition under the Extradition Treaty.

2. Under the French “objective” test, the Espel hijacking does not constitute a political offense.

Under the objective test prevalent in French jurisprudence, the motives of the offender are irrelevant in the determination of whether or not an act constitutes a political offense.³¹ Rather, the focus of the objective analysis is to identify the nature of the rights injured. A protected political offense is one that injures only the rights of the State. If private rights are injured, a common crime is prevented from becoming political even if the author thereof may have had political motivations.³²

“The hijacking of a private airline plane does not affect the state as such and could have no correlation whatsoever with the overthrow of the established government. It only creates hazards for civil aviation endangering the life of the passengers and of the crew.”³³ Therefore, regardless of the alleged political motives behind the hijacking incident on 20 January 2000, the injuries to the private interests, which constitute common crimes, can never be elevated to political offenses. This objective scrutiny clearly warrants the extradition of the hijackers to Espel, to stand trial therein.

³¹ M. R. Garcia-Mora, *The Nature of Political Offenses: A Knotty Problem of Extradition Law*, 48 VA. L. REV. 1249 (1962); S. N. Fuller, *Extradition of Terrorists: An Executive Solution to the Limitations of the Political Offense Exception in the Context of Contemporary Judicial Interpretations of American Extradition Law*, 11 SUFFOLK TRANSNAT'L L. REV. 351, 372.

³² *In re Giovanni Gatti*, [1947] ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES 145 (No. 70) (Fr.) at 145-146.

³³ AGRAWALA, *supra* note 18, at 49.

3. Under the Swiss “political motivation balancing” test, the Espel hijacking does not constitute a political offense.

Even under the most liberal test for the determination of political offenses, the Swiss “political motivation balancing” test, “proportionality” test or “predominance” test, the Espel hijacking cannot be considered a political offense warranting the non-extradition of the hijackers. Under this test, which balances the proportionality of the ends sought and the means whereby those goals are attained, the political motives of the offender are crucial.³⁴ Crimes ordinarily considered common may be considered non-extraditable under two certain specific conditions. First, there must be a *direct connection* between the common crime and the purpose pursued to modify the political organization of the state.³⁵ The common offense must be committed for the purpose of helping or insuring the success of a purely political offense, such as treason or espionage.³⁶ Second, there must be the *predominance* of the political element over the common crime. Even if the offense is *prima facie* political, in that it prepares and insures the success of a purely political offense, the political motive alone is not enough to exclude the possibility of extradition for these offenses, as “it is also necessary that their political character should outweigh their common characteristics.”³⁷ The relation between the purpose and the means adopted for its achievement must be such that “the ideals connected with the purpose are sufficiently strong to excuse, if not justify, the injury to private property, and to make the offender appear worthy of asylum.”³⁸

Using these considerations, acts of terrorism have rarely been considered political offenses.³⁹ It has been held that “acts which are not related to a general movement directed to the realization of a particular political object in such a way

³⁴ *In re Ockert*, Bundesgericht, Oct. 20, 1933, 59 (I.) Entscheidungen des Schweizerischen Bundesgerichtes 136, [1933-34] ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES 369 (No. 157) (Swit.). Same ratio is in *In re Peruzzo*, [1952] INTERNATIONAL LAW REPORTS 369 (1951) (Swit.).

³⁵ *In re Ragni*, [1923-24] ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES 286 (1923) (Swit.).

³⁶ *In re Nappi*, [1952] INTERNATIONAL LAW REPORTS 375 (No. 81) (Swit.).

³⁷ *In re Kavic*, [1952] INTERNATIONAL LAW REPORTS 371, 373 (No. 80) (Swit.).

³⁸ *In re Kavic*, [1952] INTERNATIONAL LAW REPORTS 371, 374 (No. 80) (Swit.).

³⁹ Garcia-Mora, *supra* note 31, at 1253; *In re Kaphengst*, [19290-30] ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES 292 (1930) (No. 188) (Swit.).

that they themselves appear as an essential part or incident... thereof, but which serve merely terroristic ends ... so as to facilitate ... a future political struggle, can raise no claim to asylum."⁴⁰

The acts for which extradition is sought, therefore, are clearly extraditable offenses since there is no showing that the hijacking incident served an essential – or even incidental – part of a large, general political struggle. Indeed, seizing control of the aircraft, and holding the passengers therein hostage, served only the terroristic end of pressuring the government of Espel to accede to the demands that persons lawfully imprisoned (C., Supplementary Explanation, D. 2) be released (C. 1) . The mere fact that these persons were in jail for a political reason – i.e. for having committed the crime of treason – is not sufficient to elevate the crime of hijacking into a political offense that would warrant non-extradition, and merit the grant of asylum.

C. THE REFUGEE CONVENTION DOES NOT APPLY.

Article 33 of the Convention Relating to the Status of Refugees (hereinafter, the Refugee Convention) provides that "no Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".⁴¹ A refugee is defined in the Refugee Convention as a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."⁴² Under the circumstances of this case, the hijackers cannot be considered as refugees. There is no evidence to indicate that they will be subjected to any form of persecution on

⁴⁰ *In re Kaphengst*, [1929-30] ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES 292 (1930) (No. 188) (Swit.); see, also, *In re Ockert*, Bundesgericht, Oct. 20, 1933, 59 (I.) Entscheidungen des Schweizerischen Bundesgerichtes 136, [1933-34] ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES 369, 370 (No. 157) (Swit.).

⁴¹ 189 U.N.T.S. 152.

⁴² Convention Relating to the Status of Refugees, July 28, 1951, art. 33, 189 U.N.T.S. 150

the basis solely of their political affiliation. What is definite is that they will be held accountable for their participation in the hijacking of the Espel airliner. Since the hijackers cannot be considered as refugees, their extradition to Espel would not violate Verd's international obligations under the Refugee Convention.

But even assuming that the Refugee Convention would apply, the hijackers cannot avail of protection under this convention. Under Art. 1 F (b), the provisions of the Convention shall not apply to any person with respect to whom there are serious reasons for considering that he has committed "a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee." The Espel hijacking is a serious⁴³ non-political⁴⁴ act of terrorism⁴⁵ that jeopardized the lives and safety of the passengers and crew and constituted a violation of their human rights. The hijackers are therefore excluded from refugee status.

**D. THE INTERNATIONAL COVENANT ON CIVIL AND
POLITICAL RIGHTS DOES NOT LIMIT VERD'S RIGHT TO
EXTRADITE.**

Verd is a party to the International Covenant on Civil and Political Rights⁴⁶ (C. 7) (hereinafter, ICCPR). Nothing in this Treaty prevents the extradition of the hijackers to Espel, to stand trial therein. Article 7 of the ICCPR, relied on by the Respondents to preclude extradition to Espel, imposes on Verd merely the obligation to prevent acts of torture or to cruel, inhuman or degrading treatment or punishment.⁴⁷ It has been held extradition even when the possibility of the death penalty exists in the requesting State does not violate

⁴³ G.A. Res. 2645, U.N. GAOR, 9th Sess., (1970). This resolution was approved on Nov. 25, 1970 by a vote of 105 in favor, none against, with 8 abstentions. See, also, S. Shubber, *Is Hijacking of Aircraft Piracy in International Law?*, 43 BRIT. Y.B. INT'L L. 202 (1968-69) and E. D. Dickinson, *Is the Crime of Piracy Obsolete?*, 38 HARV. L. REV. 334 (1925), where the crime of aerial hijacking is likened to piracy.

⁴⁴ See discussion on pp. 3-9.

⁴⁵ European Convention on the Suppression of Terrorism, Nov. 10, 1976, art. 1., Europ. T.S.No. 90, reprinted in 15 I.L.M. 1272 (1976) (entered into force, Aug. 4, 1978)

⁴⁶ GA Res. 39/46 Annex, U.N. GAOR.

⁴⁷ The provision reads in full: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

treaty obligations under the ICCPR.⁴⁸ Still less can there be a violation of treaty obligations under the ICCPR when the offense for which extradition is sought, i.e. hijacking, is *not* punishable with the death penalty in the requesting State (C., Supplementary Explanation, B. 3).

**III. ORDINA'S THREAT OF ECONOMIC SANCTION SHOULD
VERD PROCEED WITH EXTRADITION CONSTITUTES AN
ACT OF INTERFERENCE WHICH IS A VIOLATION OF
INTERNATIONAL LAW.**

Verd and Ordina are both members of the United Nations (C., 10). Under the United Nations Charter, it is the obligation of states to refrain from the threat or use of force against the territorial integrity or political independence of any state.⁴⁹ This is based on the principle of sovereign equality among nations.⁵⁰

Sovereign equality imposes upon a State, in the conduct of its international relations in the economic, social, technical and trade fields, to refrain from measures which would constitute interference or intervention in the internal or external affairs of another State, thus preventing it from determining freely its political, economic and social development.⁵¹

The duty of non-interference or non-intervention includes the duty of a State not to adopt any multilateral or unilateral economic reprisal or blockade and to prevent the use of transnational and multinational corporations under its jurisdiction and control as instruments of political pressure or coercion against another State, in violation of the Charter of the United Nations.⁵² Ordina's threat of strained economic relations should Verd proceed with the extradition is clearly an act of interference in both the internal and external affairs of Verd, in violation of international law.

⁴⁸ See, e.g., *Cox v. Canada*, U.N. Human Rights Committee, Communication No, 539/1993, Oct. 31, 1994, Doc. CCPR/C/52/D/539/1993, printed in 114 INT'L L. REP. 347, at 366. See, also, *Vilvarajah and Others v. United Kingdom*, 14 Eur. H.R. Rep. 248 (1992).

⁴⁹ U.N. CHARTER, art. 2, para. 4.

⁵⁰ U.N. CHARTER, art. 1, para. 2.

⁵¹ Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, GA Res. 36/103, U.N. GAOR, (1981).

⁵² *Id.*

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the State of Verd respectfully requests that this Honorable Court, by way of judgment:

- (a) **Declare** that Verd is free to extradite the hijackers of the flight of 20 January 2000 to Espel, in accordance with general international law and international agreements to which Verd is a party;
- (b) **Order** Ordina to immediately cease and desist from unwarranted interference in the sovereign rights of Verd; and
- (c) **Grant** such other and further reliefs as this Honorable Court may deem just and equitable under the premises.

Respectfully submitted,

Agents for Verd