

## SULTAN

### International Protection of Human Rights Spring 1989

(50 points)

On October 24, 1983 United States military aircraft bombed the Richmond Hill Insane Asylum in Grenada, West Indies. The bombs killed 16 patients and injured six others.

Disabled Peoples' International (DPI), an international nongovernmental organization, filed a complaint with the Inter-American Commission of Human Rights in November, 1983, on behalf of "unnamed, unnumbered residents, both living and dead of the Richmond Hill Insane Asylum. . . ." The complaint alleged unjustified violation of Article I of the American Declaration of the Rights and Duties of Man, which provides, "Every human being has the right to life, liberty and the security of his person." The DPI also alleged that Article XI (right to health) of the American Declaration had been violated in that the remainder of the patients were compelled to live in the ruins of the bombed hospital. In addition, DPI alleged a general violation of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

The United States responded in September 1984 by seeking to have the petition dismissed for failure to identify the patients who had been killed or injured. In December 1984 representatives of DPI traveled to Grenada and corrected the defect in the original petition by obtaining the names of the patients.

The United States also argued in September 1984 and again in August 1985 that the petitioners had failed to exhaust domestic remedies. The United States had established a procedure whereby Grenadans could present claims for compensation arising out of the U. S. military action. Over \$1.5 millions were distributed to some 600

Grenadan claimants; the U.S. also has considered plans for reconstruction of a new mental hospital. The Inter-American Commission ruled on April 17, 1986, that "domestic remedies were not provided by the legislation of Grenada or the United States; given the ad hoc nature of the U.S. compensation program, the evident failure of the U.S. Government to contact these incapacitated victims, and the unwillingness of the U.S. Government to compensate these victims subsequent to the expiration of the ad hoc compensation program, lead the Commission to conclude that the domestic remedies could not be invoked and exhausted" consistent with due process, so as to require the dismissal of the complaint.

This April 17, 1986, the Inter-American Commission on Human Rights ruling only decided that the application against the United States was admissible in alleging facts which constitute a prima facie violation on a human right recognized in the American Declaration. The Commission still must consider whether the facts actually establish violations. For example, the United States has asserted that the mental hospital was located in a compound that included two military forts and that there were no markings which identified the hospital as a medical facility.

You are an attorney with the Inter-American Commission assigned the task of writing a memo on the question whether the facts establish violations of human rights. Looking up the documents you find that the American Declaration is quite simplistic in its protection of the "right to life" without any qualifications. The American Convention, which the United States has signed but not ratified, is a bit more nuanced in stating, "No one shall be arbitrarily deprived of his life".

You have also been requested to state the issue(s) at the beginning of your memo.

## PART II

(50 Points)

During the course of World War II, the United States Government, in an effort to save from extermination by the German Nazis the thousands of Jews then domiciled in Hungary, sought the assistance of Sweden, a neutral nation. This was an effort that the United States could not undertake alone. Because the United States was at war with Hungary, its diplomatic presence was withdrawn. Raoul Wallenberg, a national of Sweden~ agreed to join the Swedish legation in Budapest, and to otherwise cooperate with the efforts of Sweden and "to act at the behest of the United States." As a result of these efforts, Mr. Wallenberg became the second person to be voted by Congress an honorary citizen. Winston Churchill was the first. Representative Thomas Lantos of California, a Hungarian Jewish refugee is credited with taking the initiative in making Wallenberg an honorary American citizen. (New York Times, April 13, 1985, p. 9.)

Wallenberg is credited with saving the lives of nearly 100,000 Jewish persons, as well as providing them with funds and other means of support provided by the United States. While stationed there, he served as Secretary of the Swedish Legation and was entitled to full diplomatic immunity.

Hungary was later overrun by the Soviets and in early 1945, Wallenberg was arrested by their occupation forces in Budapest. From that time forward, his precise whereabouts and his status within the Soviet Union have not been ascertained.

Between 1954 and 1981, a steady flow of reports from former Soviet prisoners indicate that Wallenberg did not die as claimed in a 1957 diplomatic note to the U.S. Secretary of State by then Soviet Foreign Minister, Mr. Andrei Gromyko. To the contrary, the reports suggest that Wallenberg remain alive and in the defendant's custody. In February, 1984 a complaint was brought in the United States District Court for the District of Columbia. Wallenberg's brother and legal guardian brought the action seeking declaratory and injunctive relief and damages against the Soviet Union for his unlawful seizure, in

1945, and subsequent imprisonment and possible death. The Soviet Union has not responded to the complaint or to discovery requests, and plaintiffs have applied for a default judgment.

You are a clerk to the Federal judge assigned the case. He requests that you prepare a memo placing the issue(s) at the beginning of your response.