

SULTAN
International Protection of Human Rights
Spring 1993

I

(50 Points]

The following is from a recent decision of the United States District Court:

Mahmoud El-Abed seeks a writ of habeas corpus, to prevent his extradition to Israel to stand trial. On April 12, 1986, he allegedly attacked by firebombs and automatic weapons fire a passenger bus enroute to Tel Aviv traveling between Israeli settlements in the occupied territory of the West Bank. Death of the bus driver and serious injury to one of the passengers resulted.

Petitioner, now a naturalized United States citizen, formerly a resident of the West Bank, allegedly fled before he could be apprehended. His two alleged accomplices were convicted in Israel and sentenced to life imprisonment for their admitted participation in the planning and execution of the attack. In sworn statements, the co-conspirators implicated petitioner and described their mutual membership in the Abu Nidal Organization, an international terrorist group. That group publicly announced its responsibility for the attack.

A year later petitioner was located in Venezuela. Venezuelan officials detained him because of suspected activities in that country on behalf of the Abu Nidal Organization. Venezuela had no extradition treaty with Israel. The Venezuelan authorities advised the United States Ambassador that they were going to expel petitioner to his country of citizenship, the United States. Venezuela placed petitioner on a commercial airline flight from Caracas to the United States. During the flight, FBI agents executed a warrant for the provisional arrest of petitioner issued by United States Magistrate John L. Caden of the Eastern District of New York.

Pursuant to the Convention on Extradition Between the Government of the United States and the Government of the State of Israel, Dec. 10, 1962, 14 U.S.C. 1707, T.I.A.S. No. 5476, Israel formally requested the extradition of petitioner from the United States on June 26, 1987. Each of the crimes petitioner is charged with under Israeli Penal Law -- murder, attempted murder, causing harm with aggravating intent, attempted arson, and conspiracy to commit a felony -- is covered by the Treaty.

Magistrate Caden held extradition hearings in December, 1987 and February, 1988 pursuant to 18 U.S.C. Sec. 3184. In June, 1988 Magistrate Caden denied the extradition request on the ground that the attack on the passenger bus constituted a "political act" for which petitioner was immune from extradition under the Treaty.

As a recent graduate of the University of Dayton Law School, you are employed as a clerk to the United States District Judge who has been assigned the Justice Department appeal of Magistrate Caden's denial of the extradition request. Your judge asks you for a memo on (1) the human rights dimensions of the case, (2) how he should rule and (3) Why he should so rule.

II.

(50 Points]

Joe and Jane Smith are both successful professionals. Happily married for ten years, and have never had any children. Jane informs Jack that unexpectedly she has become pregnant and plans to have an abortion as she does not want to become a homemaker and wishes to remain in her career. She explains that she doesn't think children should be raised in day care centers or similar locations, but rather should have continual contact with their mother. As she is unwilling to sacrifice her career for this purpose, she thinks that the "fairest thing" is to have an abortion within the first trimester of her pregnancy.

Her husband Joe is both morally and religiously, strictly against abortion. After unsuccessful attempts to persuade her to

have the child, and his willingness even to have it "put out" for adoption, he, at great risk to his marriage, attempts to bring an injunction against his wife having an abortion. These efforts have been singly unsuccessful since the present federal constitutional law holds that the decision is solely that of the potential mother.

Discussing the problem with his oldest friend, Bill, over drinks late one night, and obviously distraught regarding his wife's decision, Bill (an attorney) suggests that the court decision, which is no longer subject to appeal in the United States, become the basis of a complaint before the Inter-American Commission on Human Rights. Bill then researches this possibility and comes up with the following information and materials:

AMERICAN CONVENTION ON HUMAN RIGHTS

Chapter II -- Civil and Political Rights

Article 3 -- Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 4 -- Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

1. Does the Inter-American Commission have jurisdiction? If so, why? If not, why not?

2. Assuming that it has jurisdiction, how would it probably rule? Why would it so rule?

Good Luck!