

Sultan
International Law
Fall 1989

I. [50 Points]

Your client is the brother and closest living relative of R.W. In addition, the District Court in Stockholm, Sweden, has appointed your client the guardian of R.W.'s legal interests. Your client claims that R.W., a Swedish diplomat who was accredited to Hungary in 1945, was arrested in Budapest during that year by representatives of the Soviet Union, and that since then he has suffered imprisonment and possibly death. At the time of his arrest he was acting at the initiation of the United States government and with U.S. funds in an attempt to save the Jewish population in the Budapest ghetto from deportation to Nazi extermination camps. If these allegations are true, the USSR violated Wallenberg's diplomatic immunity under then and presently existing customary international law as well as the laws and treaties of the Soviet Union and the United States dealing with diplomatic immunity.

A Swedish lawyer, your client requests that you bring an action against the Soviet Union. While researching in the law library, you came across the following statutes:

I. 28 U.S.C. Sec.1330

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state [...] as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity.

III. 28 U.S.C. Sec.1350

Alien's action for tort

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

1. What type of an action would you consider bringing?
2. What defenses would you expect to have to deal with?
3. How do you expect that they would be resolved?
4. Why do you expect that they would be so resolved?

II. [50 points]

You are a clerk for a Federal District Judge in New York City. He presents you (in written form), the following facts:

Appellants are a group of Private Banks located in New York City, Chicago and Boston (Private). Appellee is the Central Bank of the Republic of Costa Rica (Central), a governmental agency that maintains no offices or employees in the U.S. or conducts any business here.

Back in 1984, Central failed to meet its periodical payments on loans from Private and negotiated a reschedule of payments. Under the agreements, Central was to make "unconditionally" eleven semiannual payments in New York City with United States dollars. Although the agreements did not specify governing law, they did provide for concurrent

jurisdiction over disputes in New York and in Costa Rica.

Central made the required payments until 1988 when the Republic of Costa Rica found itself in a severe economic crisis. On August 27, 1988, in response to the crisis, Central resolved that it would release no foreign currency for the payment of debts at that time. On November 24, 1988, the President of Costa Rica decreed that all public sector entities could pay external debts only with his express approval. The decree stated that such measures were necessary because "presently the Government of Costa Rica is again renegotiating its external debt and for this purpose there should be harmony of decisions and centralization in the decision-making process." Central then informed Private that the payment of external debt in United States dollars was to be deferred. When Central failed to make the required payments, Private notified Central that, unless overdue payments are received in 30 days they would bring suit for full payment of the entire unpaid loans and interest, as provided for under the agreements.

At the same time, at the request of the President of Costa Rica, President Reagan and the Congress reacted sympathetically to Costa Rica's financial crises and its default on its loans. The President advised in an Executive Order, that,

"[c]ontinuation of U.S. assistance to Costa Rica is consistent with the commitment of this Administration and of the Congress to help Costa Rica regain economic viability. We therefore regard such assistance, which is designed to help the Government with financial and management reforms and with needed credit to the private sector, as vital and in our national interest. We are hopeful that bilateral debt restructuring will be completed

within the next several months."

In an effort to "head-off" a law suit by Private, Attorneys for Central file a suit before your Judge requesting a declaratory judgment that debt payments under the agreement should be suspended and for an injunction ordering Private to join in the renegotiations of Costa Rica's debt, which Private has up to now refused to do. Private responds to Central's filing with a request that the Court order Central to perform on the 1984 agreement and pay all outstanding amounts due.

Your judge asks you to prepare a memo listing all the issues presented in the above litigation, how they should be resolved, and why they should be so resolved.

(If any of the issues are one or ones that you have already discussed in Question I, merely incorporate them by reference, and move on to the other issue(s).