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# TELDERS MOOT COURT COMPETITION

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## EDITORIAL NOTE

Following a tradition started in 1977, this year the 11th Telders International Law Moot Court Competition was held in the Peace Palace (The Hague). The case forming the basis of this competition had been written by Prof. Dinah Shelton and was included in the last issue of the *Leiden Journal of International Law*. The *Rights in Conflict Case* contained the following issues: Does the Tourisani government have the right to enforce its "Equal Rights Law" upon a minority (and thus greatly change their religion and customs) or does this minority have a right to self-determination? Did Charnia violate the principle of non-intervention when it gave, by way of airlift, assistance to that minority; and did Tournisan violate its international obligation to refrain from the use of violence when it shot down a Charnian relief plane?

The following pages contain excerpts from the best memorial for the Applicant (Charnia), presented by the University of Vienna, Austria, and from the best memorial for the Respondent (Tourisan), presented by the University of Antwerp, Belgium. The Editorial Staff hopes that the publication of excerpts from these memorials will show students how a life-size and unprepared case can be approached and mastered. The complete texts, including notes and references, can be obtained through the *Leiden Journal of International Law*.

The overall winner of the 1988 Telders Moot Court Competition, out of 12 European universities competing, was the team from Vienna, Austria. Runner up was the team from the University of Leiden, The Netherlands.

## SUMMARIES OF ARGUMENTS

### 1. GOVERNMENT OF CHARNIA, APPLICANT

#### 1. 1. Jurisdiction of the Court

Tourisan and Charnia have both made a declaration under Article 36(2) of the Court's Statute accepting as compulsory the jurisdiction of the International Court of Justice. While Charnia accepted this jurisdiction unconditionally, Tourisan made a reservation with regard to treaties which have a dispute settlement system and which are in force between the Parties.

This reservation must be interpreted in the sense that only when a treaty and its dispute settlement system are in force would the Court not have jurisdiction with regard to that treaty. Otherwise, it would be possible for a State to avoid all jurisdiction by not accepting a provided dispute settlement system and by making the above mentioned reservation to Article 36(2). Apart from the fact that such reservations are not in accordance with the wording of Article 36(3) - although they are tolerated in international law - their result would be contrary to the opinion of the PCIJ as voiced in the *Electric Company of Sofia and Bulgaria Case*.

Neither state has recognized the optional interstate jurisdiction of the Human Rights Committee under Article 41 of the UN Covenant on Civil and Political Rights (CCPR). Furthermore, an effective system for settling disputes concerning the provisions of this covenant is not in force between the two states. The quoted case is no more than an expression of what has been accepted in international law already, namely the obligation to settle disputes peacefully.

Tourisan is a member of the UN and, furthermore, has signed the Final Act of the Conference on Security and Cooperation in Europe (CSCE). It has thereby expressed its free will to settle its disputes in accordance with the above-mentioned principle. Consequently, Tourisan's reservation to Article 36(2) has to be understood in the manner stated above: Tourisan, because of the obligations it has made regarding the peaceful settlement of disputes, obviously did not intend for its reservation to be interpreted in such a way as to exclude Tourisan from all dispute-settlement systems. As that Article provides in a) - d), the Court's jurisdiction is compulsory in all legal disputes concerning: a) the interpretation of a treaty; b) any question of international law; c) the existence of any fact which, if established, would constitute a breach of an international obligation; and d) the nature or extent of the reparation to be made for the breach of an international obligation.

Because violations of basic human rights are questions of international law, the Court has jurisdiction over these matters under Article 36(2.b) of its Statute as well. Charnia,

therefore, is entitled to claim with regard to Tourisan's violations of the UN Covenants and other human rights' violations in the following proceedings.

## 1. 2. Tourisan's actions in the southeastern province constitute violations of international law

### *A.1. Tourisan has violated the right of self-determination of the people living in the southeastern province.*

The population of Tourisan's southeastern province possesses all the necessary qualifications to be entitled to the right of self-determination. A people denotes a social entity possessing a clear identity and its own characteristics.

The 'self-determination of peoples' is listed as a fundamental principle of international relations in Article 1(2) and Article 55(b) of the UN Charter. The scope of this principle is a broad one; the Charter does not limit it in any way. Attempts to limit this principle were defeated during the drafting of the Charter, for it was thought that any enumeration of the components of the right of self-determination would be incomplete. The legal nature of self-determination has become clear: it is recognized as the *right* of all peoples. Article 1 of both UN Covenants is an expression of this conviction of the international community.

Tourisan's reservation to the Covenants that Article 1 "applies only in the context of colonial overseas domination" has no effect on the legal situation. One people cannot deny another people its right of self-determination by means of such a reservation, for that would be in clear contradiction to the object and purpose of Article 1 of the Covenants as well as a limitation of the principle of self-determination as stated in the UN Charter. Article 1 of the Covenants states that *all peoples* have the right of self-determination and that all states parties, *including* those administering Non Self Governing and Trust Territories, shall respect this right. This clearly indicates that the right is also applicable outside the colonial context. Reservations such as Tourisan's contradict the object and purpose of the Covenants, for all other rights listed in them are based on the right to self-determination.

The Friendly Relations Declaration foresees three different forms of implementation. The right of self-determination may be realized by means of the establishment of a sovereign independent state; in association or integration with an independent State; or in the emergence of any other mode of implementing the right. The right of self-determination is not necessarily the same as secession. Tourisan has to respect the right of self-determination of the people in the southeastern province and its possible realization in the form of regional autonomy.

### *A.2. Tourisan's treatment of the Charnian minority in its southeastern province and its reaction to their attempt to save a national identity is a violation of the Genocide Convention.*

Article II of the UN Convention on the Prevention and Punishment of Genocide defines

genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such: a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) imposing measures intended to prevent birth within the group; and e) forcibly transferring children of the group to another group".

The equal rights law was expressly aimed at finally 'integrating' the Charnian minority into Tourisan. But the violent acts were committed by Tourisani police as well as military forces. Especially the arrest of a large number of people including nearly all the religious and political leaders of 'OldTime' religion, the forcible removal of children from the custody of their parents, the closing of shops and the destruction of crops reveal Tourisan's evident intent to destroy this ethnic and religious group. Obviously, the purpose of this law was to achieve a total assimilation of the Charnian minority.

*A.3. Tourisan has violated international law by not respecting the rights of the Charnian minority to use its own language and to profess its own religion.*

Tourisan is a state with an ethnic, religious and linguistic minority, namely the Charnian minority. Culturally the Charnian minority is united through the 'OldTime' religion which forms the major part of its culture. Historically, this minority was one of the various ethnic groups of the former monarchy, and its families feel a kinship to Charnia, from which they were torn away by the arbitrary drawing of the borders in this region after the war. These facts show that the Charnian minority is an ethnic one. But it is also a religious one, characterized by its own belief - the 'OldTime' religion. And it is also a linguistic minority because its language is not identical with Sanio, the dominant language in the country. Under Article 27 CCPR, Tourisan is obliged to adopt concrete measures aimed at the conservation of the culture, religion and language of the Charnian minority. Tourisan has by no means tried to grant the legally prescribed rights to its minorities but, on the contrary, has enacted an equal rights law which strongly restricts these rights. Article 27 confers the rights "in community with the other members of their groups" - which indicates that these rights are given to individuals in relation to the entity in order to protect collective interests. The main incentive of Article 27 CCPR is the preserving of the cultural identity of minorities.

In being a party to the CCPR Tourisan is bound to respect everyone's right to practice and teach his religion. Part of the practice of 'OldTime' religion are the segregated school system and the dress codes. The right to freedom of religion also encompasses the maintenance of the religion, and maintaining the religion is more fully assured if children in the religious community are taught in their own schools.

Tourisan has to allow the parents the right to have their children educated in accordance with their own moral and religious convictions. Parents must be enabled to send their children to schools in conformity with their conscience or religion, without being

put under pressure to violate national law, only to enjoy this internationally guaranteed right.

Article 13(1) of the Covenant on Economic, Social and Cultural Rights (CESCR) which deals with everyone's right to education points out the aim of education to achieve "the full development of the human personality and the sense of its dignity". For the people of the Charnian minority, full development of the personality can only be achieved when their children enjoy an education in accordance to the minority's traditions and convictions. Otherwise, even the pupils' personality is restricted because they are forced into a certain educational direction and, therefore, a real full and free development not guaranteed.

Both states, Tourisan and Charnia, have signed but not ratified the UNESCO Convention against Discrimination in Education of 1960. This means, according to Article 18 (a) of the Vienna Convention on the Law of Treaties, that they are not yet bound to its provisions but that they are bound to refrain from acts which would defeat object and purpose of this treaty. Though they are not parties to the Vienna Convention on the Law of Treaties, this provision is valid for them because it codifies customary international law.

Article 2 of the UNESCO Convention includes the right to separate educational systems or institutions according to sex, religion or language. For schools instituted for religious reasons, it refers to the wishes of the pupils' parents. The UNESCO Convention *inter alia* contains special obligations of the states towards national minorities.

*B. Tourisan has violated its obligations under international law to refrain from the use of force by shooting down the Charnian relief plane.*

1. Article 2(4) of the Charter of the United Nations is the culminating point of a broad development to prohibit the use of force in international relations. It outlaws not only the use of force "against the territorial integrity or political independence of any state", but also the use of force "in any other manner inconsistent with the purposes of the United Nations". These additions to the prohibition of the use of force have been added during the process of drafting the Charter to emphasize the absolute character of this provision, and not in order to diminish the scope of application. The use of force is only lawful in the cases the UN Charter explicitly provides for as exceptions from Article 2(4). This is also confirmed in the Preamble of the UN Charter, where the international community agreed that armed force should only be used in the "common interest". Consequently, the use of force against an unarmed airplane is also a violation of Article 2(4) of the Charter of the United Nations.

The peaceful intent of the Charnian airplane was clearly demonstrated by the display of the Red Cross emblem on all sides of the plane.

2. The justification of the attack on the relief plane as being a lawful reprisal cannot be upheld as well. An act of reprisal can only be regarded as lawful if the target state has violated an international obligation *vis à vis* the other state, which is a necessary precon-

dition. Charnia's humanitarian assistance in sending a relief plane was in accordance with international law. Charnia's intent was to assist the starving population of Tourisan's southeastern province, which has been subjected to massive human rights violations. Its actions were never directed against the territorial integrity of Tourisan, although the Charnian relief plane did intrude into its airspace.

This minor violation of Tourisan's sovereignty was more than justified because of the peremptory character of the principles of the UN Charter requiring states to ensure the adherence to human rights.

Even if the precondition of the prior unlawful act was fulfilled, the international community agrees that a reprisal must not comprise the use of force due to the regulations of the Charter of the United Nations. This is a clear consequence of Article 2(4) and the injunction to settle disputes peacefully in Article 2(3). Moreover, this view is confirmed by the Friendly Relations Declaration, which states clearly that "[s]tates have a duty to refrain from acts of reprisal involving the use of force". Reprisals involving the use of force are illegal. Therefore, Tourisan's shooting down of the relief plane violated international law. Furthermore, the destruction of a plane and the endangering of the lives of the crew members in comparison with the intrusion for humanitarian help do not meet the requirements of proportionality.

Since the prerequisites for a reprisal are not met in the present case, the use of force against the Charnian relief plane constitutes a violation of international law.

### **1. 3. Charnia's laws and practices are not discriminatory and not in violation of its international obligations**

Each state has the right to determine its own economic, cultural and social system. In a democratic state in which women are constitutionally granted equal rights with men, the laws and practices of that state must be seen as the will of all the people in relation to its economic, cultural and social system.

Charnia's education and legal system do represent the wishes of the Charnian people, women as well as men. Charnian laws and practices in favour of modern Western values regarding the role of women are viewed by many faithful followers of 'OldTime' religion as a violation of their beliefs and values.

Charnia's educational system represents the tradition of the Charnian people, the wishes of parents and the teachings of 'OldTime' religion; if this were not so, the adherents to 'OldTime' religion living in Tourisan would not have reacted so strongly when the state tried to change the educational system.

Charnia has recognized the right of all persons to education under Article 13 of the CESCRC and must undertake to ensure these rights equally to men and women under Article 3 of the Covenant. The education to which each person has a right must be "directed to the full development of the human personality and its sense of dignity" and must "enable all persons to participate effectively in a free society".

A person's "sense of dignity" and her or his "effective participation" in society are

largely culturally defined. The Charnian educational system is designed to fit women as well as men for what they perceive as their effective participation in society.

The idea that the roles of men and women in society can be identical is a modern Western myth. As the famous anthropologist Margaret Mead has stated, the division of male and female roles has always existed "in every society of which we have any knowledge".

Non-discrimination in education means that each person should have the right to play the role in society he or she chooses, to the full. Women in Charnia do have the right to pursue non-traditional roles, for some of them did receive higher education.

Discrimination results from forcing women into male conceptions of society, male occupations and male education while denying the importance of the functions in which women have traditionally served. Tourisan's educational "reform" is an example of this discrimination. Such an emphasis on traditional male values, in particular the forcing of women to work, can lead to a destruction of the family.

Charnia's practices cannot be termed a distinction, exclusion or limitation with the purpose of impairing equality because in a broader sense, Charnia does attempt to promote the equality of women and men in society.

It is not necessary to consider in detail Charnia's obligations under the UNESCO Convention against Discrimination in Education, because Charnia has only signed but not yet ratified the treaty. Therefore, it is only obliged to refrain from acts which would defeat the object and purpose of the treaty. The treaty obligations themselves are not an issue in this case.

Charnia has not taken any action contrary to the object and purpose of the UNESCO Convention.

#### **1. 4. Submissions**

Charnia respectfully asks the Court to adjudge and declare that Tourisan has violated international law by:

- violating the Charnian minority's right to self-determination;
- violating the Genocide Convention;
- restricting the right of the Charnian minority to use its own language freely and to live in accordance with the norms of its culture and religion; and
- shooting down the Charnian relief plane.

In addition, Charnia respectfully requests the Court to adjudge and declare that it has not violated international law by:

- passing legislation in accordance with norms of Charnian religion, tradition and culture; and
- sending a relief plane for humanitarian assistance into Tourisan's territory.

## 2. GOVERNMENT OF TOURISAN, RESPONDENT

### 2.1. The conduct of Tourisan was lawful

#### *A.1. The existence of a minority.*

Tourisan admits that the Tourisani nationals adhering to 'OldTime' religion and living in its southeastern province constitute a minority on Tourisan's territory. The same is not true, however, with regard to the Charnian nationals who have migrated to Tourisan, seeking better economic conditions.

Indeed, the legislative history of Article 27 of the International Covenant on Civil and Political Rights (CCPR) clearly shows that immigrants and aliens cannot apply for minority status, unless they have been long established on the territory of a state. If the status of minority were given to the continuing stream of several thousands of Charnian nationals seeking economic welfare in Tourisan, the national and economic integrity of Tourisan might be endangered.

#### *A.2. The rights of a minority.*

The official recognition of an ethnic or religious minority does not entail a right to secession. The Declaration on the Granting of Independence to Colonial Countries and Peoples states that:

any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and the principles of the United Nations Charter.

This is reaffirmed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations.

Both Charnia and Tourisan have acknowledged the same principle in the Final Act of the Conference on Security and Co-operation in Europe. Article 1 (3) of the CCPR on self-determination refers explicitly to the provisions of the Charter.

The right to self-determination is meant for peoples and is referred to in a colonial context. Nowadays colonial domination has disappeared, but it is still evident that a people should not be confused with ethnic, religious or linguistic minorities, whose existence and rights are recognized in Article 27 of the CCPR.

During the drafting of Article 1 of the CCPR, it was said that the article was not concerned with minorities or with the right to secession, and that the terms "peoples" and "nations" were not intended to cover such questions. Thus, Article 27 of the CCPR cannot be invoked in order to support claims for national independence.

Consequently, the Tourisani reservation to the CCPR is entirely in conformity with the prevailing opinion on self-determination. Charnia has agreed upon this point, since it did not object to the reservation. Therefore, it can hardly assert now that Tourisan did not fulfil its obligations under the CCPR in this respect.



As far as the internal organization of the state is concerned, Tourisan would like to emphasize that, in accordance with the principle of sovereign equality of all states as enshrined in Article 2(1) of the UN Charter, and reaffirmed in several other instruments, every independent state has the inalienable right to choose and develop its political system freely.

Tourisan is a country with a central government. Every Tourisani national has the right and the opportunity to take part in the conduct of public affairs, directly and through freely chosen representatives. How could one claim that the Tourisani government, which includes members of the southeastern province, deprives that province of its basic democratic rights?

Equality of rights, as expressed in Tourisan's Constitution, is the main characteristic of the human rights policy of the Tourisani government, particularly in the field of education. Tourisan is also a party to numerous international instruments protecting equality between all people, and has signed the UNESCO Convention against Discrimination in Education. Moreover Tourisan's legislature recently passed laws in order to provide for further guarantees for true equality.

In integrating the education of children of the two sexes, Tourisan guarantees full equality of opportunity and treatment and ensures an equally high standard of education and facilities. In addition, these measures are aimed at modifying the existing social and cultural patterns of conduct of men and women in order to eliminate prejudices, a goal explicitly stated in the Convention on the Elimination of All Forms of Discrimination against Women (Article 5).

Tourisan respects, in conformity with Article 13(3) of the International Covenant on Economic, Social and Cultural Rights (CESCR) and Article 18(4) CCPR, the freedom of parents to choose schools for their children, other than those established by the public authority.

However, neither these articles nor Article 27 CCPR oblige states to provide instruction in all the possible languages of minorities. Proposals to insert such an obligation during the drafting of that Covenant were rejected.

Similarly, the European Convention on Human Rights and its additional Protocols, provide for the right to education (Article 2, Protocol I) and for equality (Article 14, Convention). But, as stated by the European Court of Human Rights, the prohibition of discrimination and the right to equality do not require the establishment of certain educational institutions, nor the right to instruction in the language of one's choice.

Accordingly, one can hardly assert that Tourisan violates the principles of the right to education and equality while precisely providing equal opportunities for *all* Tourisani children. The educational policy of Tourisan has a perfectly legitimate purpose: preventing the child's alienation from the majority in society. Every person seeking employment in the more industrialized northern provinces needs a very thorough knowledge of Sanio. Children brought up exclusively in Charnian would encounter considerable dif-

faculties in their later professional life. The concern of the Tourisani legislature is to avoid these problems and to create real equality in professional opportunities.

Some parents in the southeastern province objected to the educational measures for religious reasons. Tourisan submits that a delicate balance has to be struck between the demands of different religious minorities and the legitimate concern for the welfare of the entire nation, in other words between the demands for schools in conformity with one's religion and the need for an educational system providing equal opportunities for all children.

As stated above, the minority has the right to maintain private schools to preserve its own culture. But traditional cultures are only accepted to the extent that they fit into the value system of the Covenant on Civil and Political Rights.

The minimum standards which Tourisan is allowed to impose in accordance with Article 13(3) CESCR have legitimate objectives and are not in violation of Tourisan's international obligations.

Similarly, the European Convention on Human Rights and its additional Protocols also require the state to respect the religious and philosophical convictions of the parents.

It is hard to conceive of a minimum educational standard in Tourisan, which would not offend, in any way, the convictions of the adherents of some religions existing in Tourisan. Nevertheless, some parents insisted on withholding their children (especially their daughters) from school, thus denying them the necessary education. If the Tourisani authorities gave in to the parents' claim on withholding their children from institutions not fully complying with their moral convictions, children would be deprived of learning a profession or even of just completing their education.

In such extreme cases where there was imminent danger that this would occur, the state had to take measures to protect the child, as allowed for under Article 18(3) CCPR. The freedom of the parent to manifest his religion "may be subject to such limitations as are necessary to protect fundamental rights of others". When a parent does not wish or is unable to provide a proper education, it is the duty of the society or the state to do so, even if this means removing children from parental custody in order to avoid deprivation of every education.

### *B.1. The situation of internal tensions.*

Tourisan's conduct is in accordance with the humanitarian law applicable in situations of internal tensions. The Geneva Conventions, drafted in order to deal with the traditional armed conflicts between military forces of two states, do not apply to internal tensions. Common Article 3 of the Geneva Conventions deals only with an internal armed conflict. Situations of internal tension do not reach the minimum standards for applicability of Article 3. Tourisan considers the situation in the southeastern province as one of internal tension according to the definition suggested by the International Committee of the Red Cross:

[A]s for internal tensions, the term usually refers: a) to situations of serious tension (politi-

cal, religious, racial, social, economic, etc.), or: b) to sequels of armed conflict or internal disturbances.

### *B.2. The measures taken by the Tourisani authorities.*

The order in our southeastern province had been disturbed by terrorists seeking a separate state. Although these activities constituted an attack on the safety of Tourisani's population, the Tourisani government only introduced the army in the region after the terrorists had started operating on a larger scale, obviously with outside assistance. Tourisani recognizes that there are general norms of humanity which have to be respected at all times. Those fundamental humanitarian norms were respected by Tourisani.

Tourisani took measures in response to growing terrorist activities and limited its actions against the terrorists to the strict minimum necessary, with the sole purpose of restoring peace and order in the southeastern province. The maintenance of public order in a country may necessitate the use of force by the government.

During the search for terrorists, sometimes parts of crops were damaged. This is an inevitable consequence of a military action in a rural province. The small losses fully comply with the principles of military necessity and proportionality.

### *C. Defence against the intervention.*

Charnia intervened in Tourisani's affairs and violated its sovereignty and integrity contrary to the principles reaffirmed by Article 2(4) UN Charter, Resolution 2625 (XXV) of the UN General Assembly and the Helsinki Final Act. The 1944 Chicago Convention on civil aviation confirms the established principle of the complete and exclusive sovereignty of a state over the airspace above its territory, as endorsed by the ICJ in the *Nicaragua Case*.

Tourisani complained vehemently after the first attack on its sovereignty, since the respect for territorial sovereignty is an essential foundation of international relations. In circumstances of internal tensions, only an independent organization like the International Committee of the Red Cross (ICRC) could offer such assistance. Assistance given by a single state like Charnia is not justified, and its repetition only aggravated the situation.

According to Articles 22-23 of the Fourth Geneva Convention airplanes have to ask permission to enter and follow an agreed flight plan. Neither of these obligations was fulfilled.

Although the unlawfulness of Charnia's action is clearly established, the Tourisani government is nevertheless prepared on humanitarian grounds to offer appropriate compensation for the loss of the plane without recognizing responsibility for this accident.

## 2. 2. Charnia's laws and practices are discriminatory and in violation of Charnia's international legal obligations

### *A.1. The right to education.*

When organizing higher education, a state is under the obligation to make it equally accessible to men and women. In Charnia, however, higher education is almost exclusively restricted to males. Such inequality, when organized *by law*, is a manifest violation of Charnia's international obligations. The United Nations attaches particular importance to the equality of men and women, as illustrated by the drafting history of Article 3 of both Covenants.

This is so fundamental that Article 1 of the unanimously adopted Declaration on the Elimination of Discrimination against Women declares that:

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

Even though the Convention against Discrimination in Education is not applicable because it has been ratified by neither Charnia nor Tourisan, the signing of this treaty nevertheless has legal effects. The customary law on the law of treaties, as codified in Article 18 of the Vienna Convention on the Law of Treaties, provides that a state

[i]s obliged to refrain from acts which would defeat the object and purposes of a treaty when it has signed a treaty.

On the other hand, when the discrimination results out of *human behaviour* (administrative practices, customs and prejudices against women), Charnia also falls short of its obligations, for Article 13(2.c) speaks of equal accessibility "by every appropriate means" and Article 26 of the CCPR provides that the law has to prohibit discrimination. So if tradition prevents equality, the state is under the obligation to alter this situation by law. Indeed, in adopting Article 2 of the Declaration on the Elimination of Discrimination against Women, the majority held it necessary to call for the abolishment of discriminatory customs and practices, precisely because that was the very purpose of the Declaration.

Single-sex schools cannot be deemed discriminatory *in se* according to Article 2(a) of the Convention against Discrimination in Education, on the condition however, that two such systems

[o]ffer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality and afford the opportunity to take the same or equivalent courses of study.

In Charnia, however, girls are only taught religious and family duties, basic literacy and numbers. This can hardly be considered "the same or equivalent course". "Equivalent" means "with equal value". Neither do the two systems offer equivalent access, for higher education is almost exclusively restricted to male students.

The Convention against Discrimination in Education is not applicable, but by sign-

ing this convention, Charnia, like Tourisan, has at least expressed that its purposes are meaningful. Charnia can invoke its tradition to maintain separate education, but it fails to demonstrate that conditions are fulfilled in order to prevent women from remaining in an inferior position.

### *A.2. The right to work.*

It is an entirely domestic matter of a state to determine whether it does or does not require licences for the practice of professions engaging a certain responsibility. Such licences can be denied to persons lacking the necessary ability or skills. But when they are denied solely on the ground of a person's sex, the purpose of a licence system is to ensure not the capability of holders, but the exclusivity of certain professions for one of the genders.

### *A.3. Tradition versus equality.*

The enumerated problems (educational facilities, professional opportunities) all amount to the contradiction between two recognized rights: the right to equality and the right to religious freedom. Several authors maintain that traditions should not be upheld when they result in discrimination towards a group of people. In such circumstances equality must prevail.

In as far as the protection of women is concerned, it has been observed that, traditionally, protective legislation was rationalized by an attitude of "romantic paternalism" which, in practical effect, put women not on a pedestal but in a cage. The Convention on the Elimination of All Forms of Discrimination against Women condemns the restriction of women to stereotyped roles, even if those roles in society are invested with virtue and dignity. It is obviously true that men and women do not have an entirely equal role in society. The inevitable consequence however is that the arguments of physical difference and protection, however valid, invariably result in the subordinate position of women in society.

The duty to respect human freedom and dignity is universal and not open to adaptation to all the different cultures in the world. It can never have been the intention of the drafters of the Universal Declaration or of the Covenants to set principles which were allowed to be modified whenever traditions are opposed to it. Consequently, Charnia cannot uphold the contrary now.

Finally, a general 'agreement' over the situation existing in Charnia could be invoked. Undoubtedly, those who have the capacity to agree shall do so. But how can a woman disagree when, due to lack of education, she does not reach a position high enough to raise her voice? 'Agreement' of the population could be misleading if it is clear that only men hold offices and functions high enough to decide about the fate of the entire population.

### *B.1. The principle of non-intervention.*

The principle of non-intervention prohibits all direct or indirect intervention of states or groups of states in the internal or external affairs of other states. The assistance of Charnia is not justifiable on the legal level. Charnia's intervention was motivated by purely political reasons: the support of terrorists seeking a separate state and wishing to overthrow the Tourisani government.

It is clear that Charnia wanted to exercise coercion. An intervention would only be justifiable if the fundamental principles of humanity were grossly and systematically violated by Tourisan. However, on the contrary, Tourisan did everything to restore peace and order, and even during the period of internal tensions human rights were always respected.

Charnia's assistance to the religious minority including Tourisani nationals is an intervention because:

- it is a threat to Tourisan's sovereignty and integrity;
- Charnia hoped to gain privileged relations with a possible future independent state in which its influence would be preponderant;
- the Charnian assistance was directed towards an overthrow of the Tourisan government and impeded Tourisan in its task of restoring peace and order.

In the *Nicaragua Case* the Court ruled that the American intervention could not be justified on the legal level and that there is no such general right of intervention in support of an opposition within another state.

### *B.2. Humanitarian intervention.*

Charnia's intervention cannot be justified by presenting it as "humanitarian intervention" either. There is a general agreement that humanitarian intervention may only serve the protection of basic human rights which are violated on a large scale. Humanitarian intervention has to be confined to those situations in which the right to life and the right to physical and mental integrity are violated on such a massive scale that non-intervention by other states might be so immoral as to undermine the most basic principles, if not the very idea, of law; and there may not be selfish interests involved on the side of the intervenor. No such serious violations of human rights occurred in Tourisan.

Charnia cannot escape condemnation by referring to humanitarian assistance. This sort of assistance had to be limited to the purposes in the practice of the ICRC to prevent and alleviate human suffering wherever it may be found, and had to be given to all in need. If Charnia wished to attach value to the reports on starvation in Tourisan, it should have given assistance to all citizens of Tourisan, not just to the religious minority in the southeastern province.

### *B.3. Right of self-defence.*

Nor can the Charnian action be justified under Article 51 of the UN Charter dealing with the concept of self-defence. As stated in the *Nicaragua Case*, the Charter itself testifies

to the existence of the right of collective self-defence in customary international law, but the exercise of this right is subject to the state concerned having been the victim of an armed attack. There has not been an armed attack against Charnia.

If Charnia only intended to give humanitarian assistance, such as food and medical supplies, it could easily have asked and might well have obtained Tourisan's permission, particularly since both states maintain normal diplomatic relations with each other. Since in these circumstances of internal tensions humanitarian intervention by an individual partial state like Charnia cannot be justified, only independent assistance from the ICRC could be allowed. Such assistance would not constitute interference in the internal affairs of a state, but there is no obligation on the part of the governments to accept such offers in situations of internal tensions.

If it was necessary and if the ICRC had offered such assistance, Tourisan would certainly have accepted this aid. Charnia did not offer any assistance; and if Tourisan may refuse the ICRC assistance, it may certainly refuse possible Charnian assistance. The Geneva Conventions are designed to ensure that impartial humanitarian organizations are able to intervene in all those situations which fall within the scope of the Conventions. Tourisan therefore concludes that the Charnian assistance has no legal basis and constitutes an intervention in Tourisan's internal affairs.

### 2.3. Submissions

The Government of Tourisan asks the Court of Justice to adjudge and declare that:

- The Court does not have jurisdiction over matters covered by the Covenant on Civil and Political Rights.
- The minority living in the southeastern province and having the Tourisani nationality is able to exercise its basic democratic rights within the existing political system.
- The educational system in Tourisan is neither discriminatory, nor is it in violation of the right to religious freedom.
- Tourisan's conduct during the internal tensions fully complied with basic human rights and humanitarian norms.
- Charnia violated Tourisan's sovereignty and integrity.
- The Charnian assistance is not justifiable as a humanitarian intervention or as humanitarian assistance.
- Charnian laws and persisting traditions with regard to education and labour organization are in violation of the non-discrimination principle.