

SUMMARY OF ARGUMENT

The United States' extrajudicial execution of a Canadian resident and citizen was unlawful under customary international human rights law. The U.S. actions with security forces constitute an arbitrary deprivation of human life. A state may be held responsible for violations of the right to life where the violations are perpetrated against individuals by authorized agents of the State on foreign territory. There were reasonable alternatives available to the execution of Max Aziz. For example, the U.S. could have notified Canada of its concerns. Even if the U.S. did not violate customary international human rights law, the U.S. violated customary international humanitarian law, because Aziz was a civilian not directly participating in hostilities against the United States at the time of execution.

Article 6 of the Convention of the High Seas of the Convention of the High Seas indicates that ships sailing under the flag of one State shall be subject to its exclusive jurisdiction on the high seas. Under Article 6, the United States government did not have the requisite approval from the government of Canada to board, search, and seize *The Maple Princess*, a flag ship of Canada. The U.S. cannot prove that the *The Maple Princess* was a pirate ship. Even if *The Maple Princess* was a pirate ship, Article 107 indicates that only ships clearly marked and identifiable as being on government service can carry out the seizure of pirate ships. The United States Special Ops "clandestinely" followed *The Maple Princess* prior to boarding, and the passenger's were asleep. This activity indicates that there was nothing identifiable or clearly marked to allow the passengers to be aware of the official positions of the United States presence.

Universal jurisdiction may allow States to stretch its judicial arm beyond its established jurisdiction. International conventions and treaties only codify universal jurisdiction for the most serious offenses. Terrorism is not a serious offence, because the Inter-American Convention on Terrorism prohibits a party to the convention from exercising jurisdiction in the territory of another party. According to esteemed publicists, if universal jurisdiction exists, universal jurisdiction allows jurisdiction for concerns that are of great concern to the international community. However, the “generalized agreement that is it includes piracy, slavery and slave-related practices, war crimes, crimes against humanity, genocide, and by convention, torture and some international terrorism crimes.” In this case, the authority of publicists does not outweigh the authority of international treaties, according to the statute of this court.

International Court of Justice has ruled that a Minister acting in official capacity was immune from prosecution of all crimes. Furthermore, *The Maple Princess* is immune from seizure, as guided by principles of the Foreign Sovereign Immunities Act (FSIA) that provides immunity for property of a foreign state that does not involve a commercial activity that substantially affects the United States. The allegations against the Prime Minister of Canada do not rise to the level of breaches against humanity and therefore immunity should be afforded. *The Maple Princess* was boarded off the coast of Canada, and the incident had no direct effect upon the U.S.. The heroin aboard *The Maple Princess* would have a direct effect upon Canada, where it would enter Canadian territory and would affect the citizens of Canada. There is no indication that any of these incidents would have occurred in the U.S.

ARGUMENT

The United States Violated International Law When Executing Max Aziz

The extrajudicial execution of Max Aziz, a Canadian resident and citizen, was unlawful under international law. Canada acknowledges the compelling state interest in protecting citizens against terrorist attacks. However, there were reasonable alternatives available to the extrajudicial execution of Max Aziz. For instance, the United States could have notified the Canadian government of its suspicions, and requested that an arrest be made. Aziz was not directly participating in hostilities against the United States at the time of execution. The attack was disproportionate. “Empowering Governments to identify and kill ‘known terrorists’ places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted.”¹ The court ruling against Canada in this case would have the practical effect of giving the United States an unlimited license to kill whoever it classifies as a terrorist, completely outside the scope of the international legal regime.

I. The United States Violated International Human Rights Law Because Aziz’s Execution was an Arbitrary Deprivation of Human Life.

The apprehension of a criminal terrorist is a law enforcement matter. Labeling the incident with Maz Aziz as a law enforcement matter implicates the international human rights regime. Under this framework, the intentional use of lethal force by

¹ UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Civil and Political Rights, including the Questions of Disappearances and Summary Executions, at para. 41, UN Doc. E/CN.4/2005/7 (December 22, 2004) (Prepared by Philip Alston)

authorities can only be justified under strict conditions.² The state in question is obliged to respect and ensure the rights of life and due process of law to every person.³

The International Covenant on Civil and Political Rights (“ICCPR”), the American Convention on Human Rights, and the African Charter refer to express prohibitions against the “arbitrary” deprivation of life.⁴ The European Convention for the Protection of Human Rights provides that no one shall be deprived of life intentionally.⁵ Due process of law as contemplated by the international human rights regime includes the right to a fair trial, to examine the evidence, and a presumption of innocence.⁶

The right to life is a non-derogable right.⁷ Even in an armed conflict, the fundamental tenet of international human rights law must still be observed. However, the arbitrary deprivation of life must be assessed in view of the laws of armed conflict, and not solely by terms of the ICCPR.⁸ The ICCPR is extra-territorial in scope, in that a state may be held responsible for violations of rights under the Covenant where the violations are perpetrated against individuals by authorized agents of the State on foreign territory, “whether with the acquiescence of the Government of that State or in opposition to it.”⁹

² David Kretzmer, Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?, 16 E.J.I.L. 171, 176, No.2 (2002).

³ Id.

⁴ International Covenant on Civil and Political Rights, Art. 6(1); American Convention on Human Rights, Art. 4; African Charter, Art. 4.

⁵ European Convention for the Protection of Human Rights, Art. 2(1).

⁶ International Covenant on Civil and Political Rights, Arts. 14 -14(2)(e).

⁷ Id, Art. 4(1)

⁸ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996, I.C.J., at para. 25.

⁹ Lopez v. Uruguay, UN Human Rights Committee, communication No. 52/1979, CCPR/C/OP/1 at 88 (1984), paras. 12.1-12.3. (Uruguay held responsible for violating human rights under ICCPR when security forces abducted and tortured a Uruguayan national on foreign territory). See also Loizidou v. Turkey (Preliminary Objections), Eur. Ct. H.R. (1995), accessible at <http://www.echr.coe.int/ECHR>. (Turkey held responsible for human rights violations of Greek Cypriot’s property rights in North Cyprus, when Turkish troops occupy North Cyprus).

Max Aziz was executed 260 miles off the coast of Nova Scotia.¹⁰ The United States never notified Canada of its suspicions that Maz Aziz was somehow involved with a terrorist organization. Any assertion that no reasonable alternative existed runs contrary to the facts. Mr. Aziz was not operating a weapon, or relaying instructions to terrorist cells at the time of execution. Surely, a vacation cruise with Mr. Aziz's wife, Estelle, and their friends the Tomigans, did not represent the last possible moment to frustrate a terrorist attack. While 260 miles off the Canadian coast, there is no reason why the United States could not have requested the Canadian government make an arrest upon the *Maple Princess* sailing into Canadian territorial waters. Britain's struggle with IRA terrorists reflects the duty to pursue alternatives to the use of force in similar circumstances.¹¹

Based on unverifiable intelligence reports, and the existence of a reasonable alternative in requesting the Canadian government make an arrest, US actions with military personnel constitute an arbitrary deprivation of life, for which the United States is liable.

II. Even if the U.S. did not violate International Human Rights Law, the United States Violated International Humanitarian Law When U.S. Security Forces Executed a Civilian Not Directly Participating in Hostilities

International humanitarian law as reflected in the Geneva Conventions is the source of law governing armed conflict. Common Article 3 provides that "persons taking no active part in the hostilities... shall in all circumstances be treated humanely... to this end, the following acts are and shall remain prohibited at any time and in any place

¹⁰ *Compromis*, para. 7.

¹¹ *McCann v. UK*, Eur. Ct. H.R. (1996), at para. 213, accessible at <http://www.echr.coe.int/ECHR>. (British special forces killed 3 IRA terrorists in Gibraltar on the assumption they would denote a bomb if apprehended. The European Court of Human Rights held that the UK violated the right to life because it did not properly consider alternatives to lethal force).

whatsoever...[including] violence to life and person.”¹² There are two categories of armed conflict: international, and non-international. The Geneva Convention, Additional Protocol I, is applicable to international armed conflict. International armed conflict is understood to mean a conflict between states.¹³ The Geneva Convention, Additional Protocol II, applies to non-international armed conflict. Non-international armed conflict includes internal conflicts occurring within a state’s boundaries.¹⁴

Aziz’s alleged connection to an organization with status as a non-state actor unattached to national territory means that the incident does not fall within the purview of international or non-international conflict. By default, the incident falls under law enforcement as reflected with international human rights law. Even if the execution of Mr. Aziz was part of an armed conflict, his status as a civilian prohibited the lethal use of force. Additional Protocols I and II contain a provision stating that “civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.”¹⁵ Under this provision, a civilian loses protection when directly engaged in hostilities.¹⁶ This provision has risen to the level of customary international law.¹⁷ The Statute of the International Criminal Court codifies customary international law when it provides that “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” constitutes a war crime.¹⁸

¹² Geneva Conventions, Common Article 3.

¹³ Prosecutor v. Tadic, I.C.T.Y., Judgment, 7/15/99, App. Ch., IT-94-1-A, at para. 84.

¹⁴ Geneva Conventions, Additional Protocol II, Art. 1(1).

¹⁵ Geneva Conventions, Additional Protocol I, Art. 51(3); Additional Protocol II, Art. 13(3).

¹⁶ Commentary on Additional Protocol I, ICRC, Geneva, §1942 provides that “a civilian who takes part in armed combat, either individually or as part of a group, thereby becomes a legitimate target, though only for as long as he takes part in hostilities.”

¹⁷ Jean-Marie Henckaerts, Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict, 87 Int’l Rev. of the Red Cross 175, No. 857 (March 2005).

¹⁸ Rome Statute of the International Criminal Court, 8(2)(b)(i).

Thus, the civilian provision provides the framework whereby an armed conflict action should be assessed.

The Israeli Supreme Court has established a test for determining when a civilian is taking direct part in hostilities:

A person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates weapons which unlawful combatants use, or supervises their operation, or provides service to them, be the distance from the battlefield as it may. **All those persons are performing the functions of combatants.**

However, a person who sells food or medicine to an unlawful combatant is **not taking a direct part**...the same is the case regarding a person who aids unlawful combatants by general strategic analysis, and grants them logistical, general support, **including monetary aid.**¹⁹

The United States alleges that Aziz was providing monetary aid to terrorists, which falls squarely under the category of not taking a direct part in hostilities. Aziz was not operating weapons, or transporting combatants to the battlefield. He was a civilian on vacation with his family and friends, when he was summarily executed. Aziz was not directly participating in hostilities against the United States. Accordingly, under the armed conflict model, the execution of Aziz is a war crime.

II. The United States violated the Law of the Sea when it boarded, searched, and seized *The Maple Princess* without first obtaining the approval of Canada.

The United States government did not have the requisite approval from the government of Canada to board, search, and seize *The Maple Princess*, a flag ship of Canada. Article 6 of the Convention of the High Seas indicates that ships sailing under the flag of one State shall be subject to its exclusive jurisdiction on the high seas.²⁰ This

¹⁹ The Public Committee Against Torture in Israel v. Israel, Supreme Court of Israel, Judgment, December 14 2006, at para. 35, accessible at http://elyon1.court.gov.il/Files_ENG/02/690/007/a34/02007690.a34.pdf.

²⁰ Convention of the High Seas define the High Seas as all parts of the sea that are not included in the territorial sea or in the internal waters of a State

issue discusses whether the United States violated Article 6 of the Convention of the High Seas when it did not consider Canada's exclusive jurisdiction before boarding, searching, and seizing *The Maple Princess*, a Canadian flag ship.

Article 6 of the Convention of the High Seas expressly states that exclusive jurisdiction will not be given to the flag state where there are exceptions "expressly provided for in international treaties or in these articles." These circumstances do not fall within the exceptions as articulated in Article 6. In order to classify *The Maple Princess* as a pirate ship, potentially rendering it free to the invasion of the United States authority, *The Maple Princess* must have been involved in illegal activities as defined by Article 101 of the Law of the Sea.

Article 101 defines piracy as, "any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft." The United States' limited investigation alleged that Aziz was a financial contributor to the Al-Qaeda organization. Based on this presumption, the United States government labeled *The Maple Princess* a pirate ship for housing Max Aziz, a suspected facilitator of illegal acts of violent activities.

The United States Department of State has labeled the Al-Qaeda organization as a Foreign Terrorist Organization (FTO) responsible for planning and constructing various harmful activities against United States citizens.²¹ The United States seeks to eject FTOs from within their borders, refuse any financial assistance to foreign countries that support FTOs, and work toward eliminating the operations of FTOs.²² However, the Al-Qaeda organization is transient, decentralized, and unrecognizable composition, which makes it

²¹ Section 140(d)(2) of the Foreign Relations Authorization Act

²² United States Department of State: Office of Counterterrorism 1995. FTO

difficult to attribute various terrorist activities to this specific organization. The influence of the Al-Qaeda organization is debatable because of its lack of a formal structure.²³ Certainly neither the United States Seals nor the United States Sharks, nor any other United States government investigators discovered any acts of violence, detention, depredation that occurred personally by Aziz or any of the other passengers present.

On July 16, 2006 the US Navy boarded *The Maple Princess* and systematically searched and seized the property found within. This event was preceded with months of investigation regarding the route of travel and activities of Max Aziz. Given the amount of research and preparation undertaken by United States investigation agencies, there was sufficient time to notify the Canadian government of their suspicions regarding Max Aziz and their intentions to seize *The Maple Princess*. At no time did the United States government notify Canadian government about the suspected illegal activity nor the plans to board, search and seize *The Maple Princess*, and has therefore violated Article 6 of the Convention on High Seas.

Assuming arguendo that *The Maple Princess* is considered a pirate ship and therefore open to seizure by any State, the United States must still honor the jurisdiction of Canada as the flag state. Article 104 of the Law of the Sea indicates that a ship may retain its nationality although it has become a pirate ship.²⁴ At no time during the process or during the proceedings following the boarding, search, and seizure did the Canadian government renounce the nationality of *The Maple Princess*.

Assuming arguendo that *The Maple Princess* was a pirate ship, Article 107 indicates that only ships clearly marked and identifiable as being on government service

²³ *The Power of Nightmares*. Adam Curtis 2004. BBC

²⁴ The retention or loss of nationality is determined by the law of the State from which such nationality is derived.

can carry out the seizure of pirate ships. The United States Special Ops “clandestinely” followed *The Maple Princess* prior to boarding.²⁵ Following these discrete activities, the United States Seals “surreptitiously” boarded *The Maple Princess*. This activity indicates that there was nothing identifiable or clearly marked to allow the passengers to be aware of the official positions of the United States presence. In fact, the passengers were asleep when the United States Seals raided their ship. Clearly the lack of discretion employed by the United States Seals to search and seize *The Maple Princess* do not reflect the transparency sought as codified in Article 107 of the Law of the Sea.

In summation, the United States had adequate time to notify the Canadian government of the suspected illegal activities involving *The Maple Princess* and Max Aziz. Secondly, the United States cannot prove that *The Maple Princess* is considered a pirate ship based on Max Aziz involvement with Al Qaeda. Furthermore, even if *The Maple Princess* was considered a pirate ship, the Canadian government did not renounce the nationality of *The Maple Princess* and therefore maintains its exclusive jurisdiction as flag state. Lastly, the United States government officials were not clearly identified before boarding *The Maple Princess*. For these reasons, The United States has violated the Law of the Sea.

III. US confiscation of the Maple Princess is internationally unlawful because Aziz’s acts are not enumerated as violations in applicable terrorism treaties that establish universal jurisdiction.

The Third Restatement of the Foreign Relations of the United States § 404 explains that universal jurisdiction is strictly reserved for offenses that are of universal concern to the international community because it allows a State to assert

²⁵ *Compromis*, para. 7

jurisdiction when the actions have no direct affect upon it.²⁶ Simply put, universal jurisdiction can possibly allow States to stretch its judicial arm well beyond its established jurisdiction. Hence, this is the reason why international conventions and treaties only codify universal jurisdiction for the most serious offenses.

According M. Cherif Bassiouni, who was nominated for the Nobel Peace Prize due to his contributions in the creation of the International Criminal Court and has published over 200 pieces of written work on international legal issues, treaties normally recognize universal jurisdiction for jus cogens principles, but there are some treaties that also allow it for international crimes.²⁷

The 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons and the 1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, for example, for example, have articles that prohibit the conventions from prohibiting party States from exercising their domestic criminal law.²⁸ Similarly, the 1970 Hague Hijacking Convention also offers universal jurisdiction for international crimes.²⁹

The U.S. may argue that Mohamed Aziz's actions of smuggling drugs and money for potential terrorists purposes fit within the general objective of this convention.

However, article 1 (a) of the convention explicitly states offenses under this treaty are

²⁶ Restatement (Third) of the Foreign Relations of the United States § 404 (1987).

²⁷ M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 Va. J. Int'l L. 81, 125, 126. (2001).

²⁸ *Id.*

²⁹ *Id.*

for seizures or assisting in the seizures of aircraft.³⁰ While here, the issue involves a sea vessel.³¹

The U.S. may also assert that the Inter-American Convention on Terrorism³² and its connection to International Convention for the Suppression of the Financing of Terrorism³³ and the International Convention for the Suppression of Terrorist Bombings, specifically article 3 of that convention³⁴, legally enables it to assert universal jurisdiction over the *Maple Princess*. This argument fails, however, because there is nothing within the text of the Inter-American Convention on Terrorism that establishes universal jurisdiction. To the contrary, it simply prohibits a party to the convention from exercising jurisdiction in the territory of another party.³⁵

One final argument the U.S. will probably make is that the legal theory behind universal jurisdiction is that it allows jurisdiction for concerns that are of great concern to the international community. A possible source of authority would be the Third Restatement of the Foreign Relations of the United States § 404.³⁶

However, this is rebutted by the fact that perhaps the most notable authority on the subject, M. Cherif Bassiouni, has observed that while the applicability of universal jurisdiction is still an unsettled question, the “generalized agreement that it includes piracy, slavery and slave-related practices, war crimes, crimes against humanity, genocide, and by convention, torture and some international terrorism

³⁰ Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention), Dec. 16, 1970, art. 4(3), [22 U.S.T. 1641](#), 860 U.N.T.S. 105.

³¹ *Compromis*, para 10.

³² Inter-American Convention on Terrorism, June 3, 2002, AG/RES. 1840 [hereinafter ICT].

³³ G.A. Res. 54/109 ¶ Art. 2 (1) (a), G.A. U.N. A/RES/54/109 (Dec. 1999).

³⁴ G.A. Res. 52/165 ¶ Art. 3, G.A. U.N. Do.A/RES/52/1645 (Jan. 9, 1998).

³⁵ ICT, art. 19.

³⁶ Restatement (Third) of the Foreign Relations of the United States § 404 (1987).

crimes.”³⁷ Moreover, if the U.S. attempts to argue that some esteemed publicists have argued and urged for a wider universal jurisdiction in the area of terrorism, these authorities do not outweigh the authority of international treaties according to the statute of this court.³⁸

IV. The doctrine of head-of-state immunity should prevent the US from seizing The Maple Princess in conformity with customary international law.

Head-of-state immunity serves to safeguard the relations among foreign governments and their leaders.³⁹ The disparities in the application of head-of-state immunity as a custom of international law has led to no clear standard for application. Since there is no agreement on the degree of immunity that attaches to the status of head of state, there is no applicable standard that can be viewed as customary international law.⁴⁰ However, the International Court of Justice ruled that a Minister acting in official capacity was immune from prosecution of all crimes.⁴¹ Furthermore, *The Maple Princess* is immune from seizure, as guided by principles of the Foreign Sovereign Immunities Act (FSIA) that provides immunity for property of a foreign state that does not involve a commercial activity that substantially affecting the United States.⁴²

Under the guidance of a decision rendered in Congo v. Belgium, the Prime Minister of Canada should receive immunity. In Congo, the International Court of Justice held that a foreign minister is immune from prosecution for all and any crimes, whether committed during or prior to assuming his or her official capacity, so long as the minister

³⁷ M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 Va. J. Int'l L. 81, 125, 126. (2001).

³⁸ I.C.J. Statute art. 38 (1).

³⁹ Ye v. Zemin, petition for cert. filed, 2005 WL 320628 (7th Cir. 2005).

⁴⁰ Id. at 179.

⁴¹ Case Concerning the Arrest Warrant of 11 April 2000 (Congo v. Belgium), 2002 I.C.J. 3 (Feb. 14, 2002).

⁴² 28 U.S.C.A. §§ 1603-1610

maintains his or her official capacity.⁴³ In Congo, the incumbent Minister for Foreign Affairs had an arrest warrant issued by a Belgian magistrate, alleging grave breaches of the Geneva Conventions of 1949, the Additional Protocols and crimes against humanity.⁴⁴ The Congo maintained that the arrest warrant violated the Minister for Foreign Affairs immunity, as well as the principle that a State may not exercise its authority on the territory of another State.⁴⁵ The Court accordingly concludes that the functions of a Minister of Foreign Affairs are such that, throughout the duration of his or her office, he or she when abroad enjoys full immunity from criminal jurisdiction and inviolability.⁴⁶

The allegations against the Prime Minister of Canada do not rise to the level of breaches against humanity and therefore immunity should be afforded. In Congo, the Minister of Foreign Affairs was alleged to have committed acts against humanity in violation of *jus cogens*. However, the Court acknowledged the allegations and still granted immunity. In the present case, the U.S. has seized *The Maple Princess* under the guidelines that it was used in the conveyance of narcotics, which is not a norm of *jus cogens* and is a less severe offense than a crime against humanity. For these reasons, the Prime Minister of Canada, acting in official capacity, should be afforded immunity under the head-of-state immunity doctrine, invalidating the seizure of *The Maple Princess* by the United States. Furthermore, the U.S. is in violation of customary international law in exercising authority on the territory of another state. This Court has ruled that even in grave breaches and crimes against humanity that this principle stood intact. Therefore, it

⁴³ 2002 I.C.J. at 3.

⁴⁴ Id. at 3.

⁴⁵ Id. at 33.

⁴⁶ Id. at 142.

is likely that the charges facing the Prime Minister will not override this custom prohibiting interference from another State.

FSIA governs the U.S.' presumptive jurisdiction over *The Maple Princess* as the property of the Foreign Minister of Canada. The rule of sovereign immunity generally extends to actions involving the sovereign's governmental or public property, except to the extent that a statute such as the FSIA provides otherwise.⁴⁷ Under FSIA, immunity can not be claimed with respect to commercial activity carried on in the U.S., or upon an act outside the U.S. in connection with a commercial activity elsewhere which causes a direct effect in the U.S.⁴⁸ Commercial activity is defined as "a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose."⁴⁹ Immunity should be available to *The Maple Princess* as it is the property of a sovereign and not involved in commercial activity, which directly affects the U.S.

The commercial activity exception does not preclude immunity for *The Maple Princess*. In Supra Medical, the Third Circuit set forth a two-part test to analyze the FSIA's commercial activity exception: Under this test, the initial inquiry is whether there is a sufficient jurisdictional connection or nexus between the commercial activity and the U.S. The second inquiry is whether there exists a substantive connection or nexus between the commercial activity and the subject matter of the cause of action.⁵⁰ In applying that test, the Third Circuit held that the Defendant has carried out commercial

⁴⁷ 48 C.J.S. International Law § 41.

⁴⁸ 48 C.J.S. International Law § 46.

⁴⁹ 28 U.S.C.A. § 1603(d). Foreign Sovereign Immunity Act of 1976.

⁵⁰ Supra Medical Corp. v. McGonigle, 955 F.Supp. 374, 376 (E.D.Pa., 1997).

activity directly in the U.S. or with a substantial connection to the U.S.⁵¹ In Supra Medical, a U.S. company brought suit against various parties including British medical schools, doctors and partnerships alleging misappropriation of trade secrets and confidential information.⁵² The Defendants were developing and testing a medical scanner device at wound healing centers in England and the U.S.⁵³ The Court reasoned that UMDS' testing of the medical equipment in the U.S. qualified as "commercial activity", deeming these activities as the type of actions by which a private party engages in trade and traffic.⁵⁴

The actions of *The Maple Princess* do not fall within the commercial activity exception. The activities that occurred on *The Maple Princess* do not constitute commercial activity that is prohibited from immunity, as the activity did not involve the U.S., nor had a direct effect on the U.S. In Supra Medical, a substantial and direct effect occurred because the suit involved infringement upon a U.S. company, and the infringement activity occurred within the U.S., and thus was a direct effect on the U.S.⁵⁵ Contrary, the heroin on board of *The Maple Princess* did not occur within the territory of the U.S., as *The Maple Princess* was boarded off the coast of Canada, and the incident had no direct effect upon the U.S.. The heroin aboard *The Maple Princess* would have a direct effect upon Canada, where it would enter Canadian territory and would affect the citizens of Canada. There is no indication that any of these incidents would have occurred in the U.S., as a result of *The Maple Princess*. *The Maple Princess* is owned by the Prime Minister of Canada and is afforded sovereign immunity, which is not abridged by the

⁵¹ Id. at 377.

⁵² Id. at 376.

⁵³ Id. at 378.

⁵⁴ Id. at 378.

⁵⁵ Id.

commercial activity exception, since the activities on-board did not constitute a direct effect upon the U.S.

The Maple Princess, as the personal property of the Prime Minister of a sovereign nation, should be immune from seizure as the property of a sovereign is entitled to immunity where it does not involve commercial activity that directly affects the U.S., and where it is customary international law for States not to exercise authority over the territory of other States.

CONCLUSION

For all the abovementioned reason argued in this memorial, Canada respectfully requests that this honorable Court:

- 1) **Declare** that United States of America did violate international law when it conducted the "targeted killing" of Canadian national Mohamed Aziz,
- 2) **Declare** that United States of America without first obtaining the approval of Canada violated the Law of the Sea when it boarded, searched, and seized *The Maple Princess*,
- 3) **Declare** that United States of America's exercise of Universal Jurisdiction over the *Maple Princess* unlawful under international law
- 4) **Declare** that the doctrine of "head of state immunity" prevents the United States of America from judicial forfeiture proceedings against the *Maple Princess*?

Respectfully Submitted,