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## STATEMENT OF FACTS

1. Mr. Stephen Sharper is a citizen and resident of Canada and long time member of Canada's Parliament. In April 2003, Mr. Sharper purchased *The Maple Princess*, a sail catamaran from Lunenburg Foundary and Engineering in Nova Scotia, Canada. The yacht is a registered Canadian flag ship. Sharper occasionally entertained Canadian politicians and dignitaries on the yacht.

2. On March 10, 2006 Mr. Sharper was sworn in as Prime Minister of Canada. A few weeks later, Mr. Sharper agreed to lease *The Maple Princess* to his half-brother, Mr. Flan Tomigan, also a citizen and resident of Canada, for two months, June and July 2006. The written lease agreement indicates that Tomigan and his wife intended to sail the vessel from its home port in Sydney, Nova Scotia, to Ireland and back for their summer vacation.

3. Mr. Max Aziz, a citizen and resident of Canada, is a close friend of Flan Tomigan. Since 1994, Aziz has run an extremely profitable import-export business based in Galway, Ireland, with major customers across Europe and the Middle East. In April 2006, Tomigan invited Aziz and his wife, Estelle, to join the Tomigans in Galway in July and sail back with them to Canada aboard *The Maple Princess*.

4. Based on limited banking records from Cypriot and Swiss financial institutions, the United States Central Intelligence Agency suspected that Max Aziz, also known as Mohamed Aziz, was the primary financial figure in the Al-Qaeda terrorist organization, and that Mr. Aziz was using his import-export business to funnel millions of dollars to various Al-Qaeda cells throughout the world.

5. In June 2006, the U.S. National Security Agency (NSA) investigated the role of Mr. Aziz in Al-Qaeda and learned that he was planning on traveling with millions of dollars in Swiss Bearer Bonds from Galway to Nova Scotia on July 2, 2006, aboard *The Maple Princess*.

6. On June 21, 2006, the U.S. President issued a Top Secret Presidential Decision Directive (PDD 2006-08), authorizing a "targeted killing of Osama bin Laden's chief financier, Mohamed Aziz, who is expected to be found aboard a pleasure yacht in the high seas off the coast of Canada on or around July 15, 2006." At no time was the Government of Canada informed about the Directive or preparations for its execution.

7. A U.S. Navy PC-1 Cyclone Class Special Ops vessel was dispatched to clandestinely follow *The Maple Princess* as it sailed from Ireland to Canada. At 0200 Greenwich Mean Time on July 16, 2006, *The Maple Princess* was located 260 nautical miles east of the coast of Nova Scotia. At that time, a team of six U.S. Navy Seals surreptitiously boarded *The Maple Princess*. The Seals discovered four passengers asleep in the vessel's berths. Using Taser M-18 stun guns, the Navy Seals rendered the four passengers unconscious. They identified Mohamed Aziz, shot him in the forehead, and threw his body overboard.

8. The Seals discovered two large suitcases beneath Aziz's bunk: one containing millions of dollars in Swiss Bearer Bonds, and one filled with hundreds of ziplock bags containing a white powdery substance. The Seals took the Bearer Bonds but left the contents of the second suitcase, as well as the three unconscious passengers, behind. The U.S. Navy notified U.S. Coast Guard Portsmouth Harbor Station of what had taken place.

9. The U.S. Coast Guard immediately deployed an MH-68 "Shark" helicopter to the location of *The Maple Princess*, which was over 200 nautical miles from the Canadian coast. Without notifying the Canadian government, two of the "Shark" crew members boarded *The Maple Princess*, and confirmed the presence of approximately \$20 million worth of pure Afghan heroin. They took the vessel and its three remaining passengers into custody, sailing it into Portsmouth Harbor Station.

10. When Tomigan identified that he was the half-brother of the Prime Minister of Canada, the Coast Guard immediately released the three detained passengers, but retained *The Maple Princess* and the suitcase containing heroin. Thereafter, the United States instituted forfeiture proceedings under 21 U.S.C. Section 881, 49 U.S.C. Section 784, and 19 U.S.C. Section 1615.

11. On August 17, 2006, the government of Canada made a special appearance before the U.S. District Court, District of New Hampshire, in the forfeiture proceedings titled *United States v. The Maple Princess*. They argued that the case should be dismissed and the vessel should be returned to Sharper for three reasons: (1) since the vessel was not heading towards the territory of the United States, the United States' exercise of jurisdiction was "exorbitant under international law"; (2) as the personal property of the Prime Minister of a sovereign nation, forfeiture of *The Maple Princess* was precluded by the doctrine of "Head of State immunity"; and (3) the boarding, search and seizure of *The Maple Princess* violated Article 6 of the 1958 Convention on the High Seas, in that the U.S. did not seek nor obtain consent of Canada, as flag State.

12. In a *per curiam* opinion dated September 4, 2006, the District Court rejected Canada's arguments, finding that (a) under the circumstances, the United States could properly exercise universal jurisdiction over *The Maple Princess* under customary international law; (b) as head of government, rather than head of state, Sharper does not enjoy the benefits of head of state immunity; (c) in any event, head of state immunity does not apply to commercial acts and property unrelated to the official functions of the head of state; and (d) Article 6 of the High Seas Convention did not protect *The Maple Princess*, which was transporting a major terrorist and carrying a cargo of heroin and was therefore analogous to a pirate vessel. The U.S. Court of Appeals, First Circuit, affirmed in a one-sentence opinion.

13. In a separate case, styled *Aziz v. Rumsfeld*, Estelle Aziz sued the United States under the U.S. Alien Tort Claims Act, 28 U.S.C. Section 1350, for the killing of her husband. In a *per curiam* opinion, dated September 16, 2006, the U.S. District Court for the District of Columbia dismissed the case, citing the U.S. Supreme Court's decision in *Sosa*

*v. Alvarez-Machain*, 542 U.S. 692 (2004) . The U.S. Court of Appeals for the District of Columbia Circuit affirmed in a one-sentence opinion.

14. The government of Canada and Mrs. Aziz each petitioned the U.S. Supreme Court for writs of *certiorari*. On October 3, 2006, the Supreme Court denied each petition. On the morning of October 5, 2006, Prime Minister Sharper delivered a public address concerning *The Maple Princess*, reflecting that the United States have had opportunity to make amends for its violations of Canada's sovereign rights, and have not. The address also called for the immediate closure of the Canadian entrance to the Peace Bridge, one of the busiest border crossings between Canada and the United States. Sharper indicated that the bridge should not be reopened until the United States agrees to submit to the jurisdiction of the International Court of Justice for the resolution of Canada's claims concerning *The Maple Princess* and the unlawful killing of Canadian businessman, Max Aziz."

15. The United States agreed to submit the matters to the ICJ, and Prime Minister Sharper in turn rescinded his order to close the Peace Bridge. Pursuant to Articles 40(1) and 36(1) of the Statute of the ICJ, the two States agreed to submit the dispute to a Chamber of the ICJ composed of three judges. The States submitted four questions to the ICJ:

- a. Did the United States violate international law when it conducted the "targeted killing" of Canadian national Max Aziz, a.k.a. Mohamed Aziz?
- b. Did the United States violate the Law of the Sea when it boarded, searched, and seized *The Maple Princess* without first obtaining the approval of Canada?
- c. Was the United States' exercise of "universal jurisdiction" over *The Maple Princess* lawful under international law?
- d. Should the doctrine of "head of state immunity" prevent U.S. judicial forfeiture proceedings against *The Maple Princess*?

## QUESTIONS PRESENTED

1. Did the United States violate international law when executing Max Aziz, a Canadian resident and citizen?
2. Whether the United States violated the Law of the Sea when it boarded, searched, and seized Canada's identified flagship without providing notice or obtaining Canada's consent?
3. Was the United States exercise of universal jurisdiction over *The Maple Princess* compliant with international law?
4. Does head-of-state immunity apply to the Prime Minister of Canada thereby preventing United States judicial forfeiture proceedings against *The Maple Princess*?

## **STATEMENT OF JURISDICTION**

On October 5, 2006, the United States and Canada agreeded to submit this matter to the International Court of Justice pursuant to Articles 40(1) and 36(1) of the Statute of the ICJ.

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