

Susan J. Ferrell Intercultural Human Rights

Moot Court Competition

Problem 2011-2012

The Case of Human Bondage

Alta v. Rayna

1. The Republic of Alta (“Alta”) is located in the western portion of the island of Magna in between the Blue Sea and the Green Ocean. Alta is ruled by a democratically elected government and has been gaining in economic prosperity. In recent years, however, political corruption has plagued Alta. It also experiences high levels of poverty and limited access to education for many of its citizens. Located across the Green Ocean to the northwest is the country of Rayna (“Rayna”). As to their language, Altans speak Alto and Raynans speak Rayni, although a lot of citizens from each country are fluent in both.
2. Unlike its neighbor, Rayna’s government is a dictatorship. It currently faces various insurgent movements, including, most prominently, The Raynan Liberation Army (“RLA”), which has captured and occupied three of its provinces. The RLA has announced to the world its intention of overthrowing dictator Noletto’s (“Noletto”) regime due to its alleged pervasive corruption and massive human rights violations, with the goal of replacing it with a government dedicated to democracy and fundamental freedoms.
3. The RLA, together with other independent protesters, has organized sustained political awareness campaigns involving strikes, rallies, marches and demonstrations. In a period of two months it has spearheaded 150 demonstrations. One of RLA’s founding principles is non-violence. Still, as the organization expanded, some of its demonstrations have turned violent. The protesters have asked the rest of the world for aid in overthrowing

Noleto's government. In reaction, Noleto declared a state of emergency which made it illegal for any individual to participate in violent demonstrations against the government.

4. Alta, over the years, has provided military support and sold a vast quantity of weapons to Noleto's regime. Approximately 15 years ago, Alta and Rayna entered into a bilateral agreement according to which, in the case of armed conflict, Alta would provide Rayna with arms and troops and vice-versa. This became known as the Mutual Military Assistance Treaty.
5. Article 9, Paragraph 1 of the Mutual Military Assistance Treaty provides that in case of a dispute between the parties as to the interpretation or application of the treaty, the parties must consult each other with a view of settling the dispute by negotiation, inquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their choice. Article 9, Paragraph 2 states that any dispute which cannot be settled in such manner as described in Paragraph 1, at the request of any one of the parties, shall be subject to the jurisdiction of the International Court of Justice.
6. The Altan government, when faced with this uprising, has decided to provide the RLA with firearms and money in order to defend itself against Noleto's military forces. Meanwhile, both Noleto and Cato, his military intelligence chief, personally on different occasions ordered military forces to quell the protests and keep the protesters under control, specifically the RLA. Cato ordered the troops to show their weapons as a sign of authority to the protesters to encourage them to back down. However, Cato also authorized the military forces to use their weapons against the protesters if needed to stop the rebellion. Subsequently, these orders were applied to violent demonstrations between the protesters and the military forces. Noleto asked to be updated regularly as to the status of the operations and his Minister of Defense provided him with pertinent reports and information.
7. When Noleto received word about a particularly violent incident that occurred between his military forces and the RLA protesters, he asked Cato to "clean up" the situation.

Cato subsequently advised the military forces to “do whatever is necessary to get these guys to back off. This is our territory and we own this place!” Initially, Alta asked Noleto to step down or implement democratic reforms, and to refrain from using force against the protesters. During one of the protests approximately 20 children, standing at the sidelines of the protests and observing the demonstrations from a distance, were wounded and 5 were killed, as a result of a fight between the local members of the RLA and the military officials. Civilians of Rayna have also suffered as a result of all the campaigns; a grand total of 2,000 persons have been killed and about 3,925 have been wounded.

8. To further worsen the situation, Noleto’s government has arrested a total of 1,000 members of the RLA. Not all harmed and arrested are Raynan citizens; some are even Altan citizens. Therefore, Alta and the international community have taken an interest in these events. There have been instances in which several of the persons arrested who have sustained injuries in the course of the demonstrations have been denied medical aid and services during their incarceration. Conditions of incarceration have been characterized by crowded cells, damp dark rooms, and freezing temperatures (as a result of poor insulation) in the cells, which has led to vomiting, lethargy, confusion, slurred speech and temporary and periodic lapses of consciousness among the inmates.
9. Alta is situated in an ideal location for drug smugglers to traffic illegal narcotics from the country of Modesta (“Modesta”) to Rayna. Modesta is a country located near Alta and Rayna, and serves as a source country for trafficking in drugs and humans. Several Altan military, police officers, and intelligence officials are involved in the drug trade. Many drug smugglers have taken up residence in Alta and have set up their base of operations behind the façade of legitimate businesses. They also bribed corrupt government officials to aid in the operations.
10. The Primuses (“Primuses”) are a gang of drug smugglers from Modesta and Alta. They run an operation in which cocaine is smuggled from Modesta into Alta on small aircraft that land on a secondary airstrip that is rarely patrolled by Alta’s Air Force. The group

stores the cocaine and prepares it for shipment to the city of Croma (“Croma”), a major city in the country of Rayna. The cocaine is then loaded onto cargo ships and sent to Croma where members of the Primuses receive the shipments on the Croman River. The leader of the Primuses in Croma hires other citizens of Alta to protect the crack houses and processing plants and to unload the arriving cargo ships. The local government in Croma presumes that the operation exists but has been unable to intercept it. The Primuses have been operating undetected for decades and have now expanded their operation to include the transfer of human beings.

11. As a result of the poverty and lack of access to education for most of the citizens of Alta, a tradition has developed by which impoverished families, often from rural areas, send their children to live with host families, in urban areas, who can provide food, shelter, and education in return for domestic help. The risk of abuse is known but parents often feel that their child will have the opportunity for a better life with a more affluent family.
12. In Sera, the capital city of Alta, several government officials, military, and police have become quite wealthy from their involvement in the drug smuggling operations and have taken in many of the Altan rural children that their parents have sent away. Many of these children are being physically and sexually abused and kept from attending school. Instead, they are forced to work in the cocaine smuggling operations and are given coca leaves to chew to increase work productivity and suppress their appetites as they are only fed one small meal a day. Coca leaves are a prominent part of Altan culture. For centuries, the Altan people have chewed coca leaves, drunk coca tea during social gatherings and offered coca leaves to others as a symbol of friendship.
13. Many of the girls are provided for the entertainment of the drug smugglers from Modesta and the officials of Alta. The older and more beautiful girls are given the opportunity to go to Croma to work in nightclubs and brothels for pay or to be advertised on a mail-order bride website. When the girls arrive at the brothels or nightclubs they are kept in apartments owned by the Primuses where all of their movements are controlled. The girls are forced to work long hours with little pay and minimal food. The apartments, food, and

any other conveniences given to the girls come with a debt that must be worked off before they can earn any savings.

14. The girls that choose to be advertised on the mail-order bride websites are interviewed and subjected to extensive background checks before being offered as a bride. The website is owned and operated by a citizen of Rayna. The company markets and sells, specifically women from Alta, to men from Rayna. The men involved in this transaction are usually middle-aged, ready to settle down and looking for a wife that will fill a more traditional role, such as running the household and caring for the children. The website was created to find mainly Altan women for this type of man, who feels that Raynan women no longer seek traditional familial roles and have chosen to pursue more independent lives focused on their careers. Raynan men pay a fee to the company and select a woman to be their wife. The men are not subject to any type of screening or background checks. The contracts are provided to both parties for signature but are written exclusively in Rayni. The company organizes the paperwork and travel documents for the women and they are sent to Rayna to be married.
15. Meanwhile, in Rayna, police have begun investigating the murder of an Altan citizen. The primary suspect is the woman's husband, Zamo ("Zamo"), a Raynan citizen, whom she met through the website. Zamo has a history of domestic abuse and several prior divorces. He has repeatedly used the mail-order bride website to select brides from Alta. No efforts were made by the company to check this man's background information and he has been allowed to make repeated acquisitions through the site. After only six months of marriage, his wife was found dead in their home. She showed signs of sexual and physical abuse and the cause of death was strangulation. The investigation has led the Raynan authorities to believe that this is a domestic issue; therefore, they are reluctant to further investigate the matter because, traditionally, these matters are resolved within the family.
16. Alta's ambassador to Rayna, His Excellency Remus Yul ("Yul"), his wife, and three children are living in Heris, the capital city of Rayna. Diplomats bring citizens of their

home country with them to their job postings. This custom is usually viewed positively as providing an opportunity for impoverished people to have a better life. Yul and his wife have brought a number of young girls between the ages of nine and twelve to live with them as domestic help. The Yuls promise the families of the young girls that they will help with household chores, cook, and care for their children. In return, they will be provided with a room in the house, meals, and the ability to attend school. However, when the girls arrive in Rayna they are not allowed to go to school and are required to work from 6:00 a.m. to 10:00 p.m. every day. None of the girls speak Rayni and all are minimally educated. The girls are kept hidden and are not allowed to make friends, speak to any visitors, or answer the phone. Mrs. Yul repeatedly threatens the girls that the lives of their family members back home will be in danger if they should try to contact anyone or escape. They are given very little food, forced to sleep on the floor, and allowed no contact with family members back in Alta.

17. One day one of the girls, Anya Petronel (“Petronel”), tries to escape from the house. She is caught by one of Yul’s teenage sons and brought to Mrs. Yul. Mrs. Yul is furious and seriously beats the girl in front of the others to show them what will happen to them if they decide to run away. Petronel suffers a broken nose, some fractured ribs, and multiple cuts and bruises all over her body. She is not taken to the doctor and does not receive any medical care.
18. The teenage boy that caught Petronel after witnessing the abuse she suffered felt guilty and decided that he would no longer be complicit in the treatment of these girls. He apologized to Petronel and promised that when she got better he would help her escape. However, Petronel was terrified and did not understand the boy.
19. After a number of months passed, Petronel’s survival instinct prevailed over her memory of the punishment she suffered from trying to escape. The boy had told her that there was a convenience store a couple of blocks away and if she could get there someone would help her. Petronel had learned enough Rayni to understand what the boy meant. One day while only the boy was home, Petronel escaped. She got out of the house and ran to the

convenience store. The owner of the store noticed the small, emaciated, terrified child when she entered and immediately called the police.

20. Petronel told her story to the police and the other girls were found and rescued from Yul's house. Because Yul and his family were deemed to be protected from criminal and civil liability, they have not been charged with any offense in Rayna. The government of Rayna has asked the government of Alta to waive the Yuls' diplomatic immunity but the request was denied. The Yuls believe that they were following the traditional practice of Alta by offering these girls a better life. The story has attracted much media attention and outrage around the world.
21. Alta draws in a large international market of individuals seeking organ transplants in the private health sector at inexpensive rates for both surgery and anesthesia. There is no Altan national registry of transplantation documenting the organ donors and their recipients. Alta is also home to an underground organization known as the Freezentrans ("Freezentrans") which engages in the involuntary removal and sale of human organs. This clandestine organization is led by a group of health care professionals, corporate actors, law enforcement officials, and government ministers who are all citizens of Alta. They are sharing in the profits of this operation which totaled \$40 million in 2010.
22. Yoki Eder ("Eder"), a citizen of Rayna, was vacationing in Alta. Eder was taking a leisurely stroll on the streets of Alta when he was attacked by a group of Freezentrans who took him to their facilities in rural Alta where they drugged him, administered a local anesthetic and performed surgery to remove one of his kidneys. When he first woke up, Eder was too weak to get up, but he was still able to call the police. Once he gained enough strength to stand, he saw a police badge, which had fallen on the floor, but was unable to check it out because he was startled by the police officers knocking on the door of his hotel room. What he did see, was some sort of liquid covering part of the badge. A few police officers came in, but he only talked to one of them while the others were checking the place for fingerprints.

23. When Eder went back to the place where he had seen the police badge on the floor, it was gone. He inquired about it to the police officers, but they responded that they had not found anything on the floor. But when Eder returned to the spot where he had initially found the badge, he observed that the liquid stopped in a straight line, consistent with the edge of a badge.
24. In the weeks that followed, Eder went several times to the police station to check on the status of the investigation. Each time, he was told that they had already commenced an investigation. No one has been apprehended yet for this crime. Eder went back to Rayna, so that his country could assert his rights. He has had serious medical problems and has had to spend a substantial amount of money as a result of the kidney excision procedure.
25. Upon this latest incident, Alta and Rayna decided to enter into negotiations to settle their disputes, but they failed to reach an agreement. Alta asked Noleto to cease the attacks against Raynan and Altan citizens and to release those imprisoned as a result of the protests. In exchange, Rayna asked Alta to take more effective measures in cracking down on organizations such as the Primuses that moved persons into Rayna for purposes of exploitation. Rayna refused to release the RLA detainees in the interest of national security. Accordingly, negotiations came to an abrupt halt.
26. The Altan government presented a claim before the International Court of Justice, alleging Noleto's violation of international law in its abuse of the Raynan and Altan citizens who were dedicated to the ideals of democracy and human rights. According to Alta, Rayna also allowed the enslavement of Altan citizens in domestic servitude and sexual exploitation. Rayna contested the jurisdiction of the International Court of Justice, as it considered its handling of the issues an entirely domestic affair. It also alleged that Alta was engaging in the illegal removal and sale of organs.
27. With respect to the issues of involuntary organ transplants, Rayna contends that Altan courts cannot be trusted to give justice to Eder. Only recently, several international media outlets, including The New York Times, have reported that several judges on

Alta's Supreme Court sold decisions to the highest bidder. In turn, Alta maintains that Raynan courts are highly suspect. The judges in Rayna's Premier Court, the highest court in the country, do not have lifetime tenure and do not have fixed terms of office. Noletto has been known to call up Premier Court justices and ask for particular decisions in individual cases, and these justices have complied with his wishes.

28. Both Alta and Rayna are members of the United Nations, as well as parties to the 1966 International Covenant on Civil and Political Rights and the 1999 ILO Worst Forms of Child Labor Convention (Convention No. 182). They also ratified the 2000 United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and have criminalized trafficking in persons as defined by Article 3 of the Protocol. Both Alta and Rayna had submitted a declaration recognizing the jurisdiction of the International Court of Justice in accordance with Article 36(2) of its Statute, with Alta, however, reserving that it would not accept the jurisdiction of the International Court of Justice in relation to any matter it considered, in its unreviewable exercise of discretion, to be part of its domestic jurisdiction.
29. Alta, the Applicant, asks the Court to adjudge and declare that:
 - a. The International Court of Justice has jurisdiction to adjudicate this dispute;
 - b. The case is admissible;
 - c. Rayna violated international law when it suppressed RLA demonstrations, used force, illegally detained and mistreated demonstrators and bystanders;
 - d. Alta was justified in providing military assistance to the RLA because Rayna violated jus cogens norms of international law in its treatment of the protesters;
 - e. Rayna violated international law by allowing the transfer of persons into its territory for purposes of exploitation and for failing to protect victims and investigate and prosecute perpetrators of the offense;
 - f. Alta is not responsible for the private actions of its ambassador to Rayna.

- g. Alta did not violate international law regarding the involuntary removal of organs because the government officials involved did not act in their official capacity, and proper investigations of the incident had taken place.
30. Rayna, the Respondent, asks the Court to adjudge and declare that:
- a. The International Court of Justice has no jurisdiction to adjudicate this dispute;
 - b. The case is inadmissible;
 - c. Rayna did not violate the rights of the demonstrators and bystanders in its justified actions against violent protests;
 - d. Alta violated the Mutual Military Assistance Treaty by providing funds and weapons to the RLA;
 - e. Alta violated international law by allowing, and failing to investigate, the recruitment and transfer of its own citizens to Rayna for purposes of exploitation, while Rayna fully complied with its duties under international law in this respect;
 - f. Alta is responsible under international law for the actions of its ambassador to Rayna, which amount to domestic servitude;
 - g. Alta violated international law by engaging in, or allowing, the involuntary removal of organs and for failing to investigate and prosecute the offenders.