

**Fifth Inter-American Moot Court Competition
2000 Hypothetical Case Problem**

Victoria Riel Guevara et al. v. Alboria

Historical Background

Prior to 1900, the region currently constituting the state of Alboria was comprised of two contiguous territories, New Albertia and North Bonaria, which were colonized by, respectively, the Kingdom of Albertia and the State of Bonaria. At that time, the population of New Albertia was approximately twice that of North Bonaria.

The Kingdom of Albertia and the State of Bonaria fought for control over the territory of New Albertia and South Bonaria. On April 29, 1900, Albertia ultimately defeated Bonaria, seized control of both territories, and re-named the entire region Alboria. For the next 25 years, the region was administered directly from Albertia. Subsequently, in 1925, Albertia established a local administrative authority, and appointed Albertian residents of Alboria as members of the administrative authority and the judiciary, and as leaders of local industries.

Over the next 25 years, ties between Albertia and Alboria weakened, the local administrative authority gained more power, and the resident population began electing representatives. Finally, on October 17, 1950, Albertia granted Alboria its independence with the signing of the Constitution of Alboria.

Between 1950 and 1990, the Albertian population continued to dominate the political and economic life of Alboria, including the judiciary and the military. In addition, the governing and opposition parties in Alboria were divided principally between, respectively, Albertians and Bonarians. One of the notable legacies of this Albertian-dominated period of rule in Alboria was the creation by the Executive in 1970 of the "Templars", a special division of the Security Forces. The Templars were formed partly in response to an increase in international incidents of terrorism, and were charged with carrying out intelligence and other special missions pertaining to the protection of the national integrity and security of Alboria.

Also following Alboria's independence, the Bonarian population steadily increased, and in 1990, the opposition party, controlled by Bonarians, won the presidential election and became the majority in Congress. As part of its agenda, the new Government enacted legislation which sought to rectify what it regarded as unjust political, economic and social disadvantages suffered by the Bonarians at the hands of the Albertian population. This included legislation that expropriated key Albertian industries, and affirmative action legislation favoring Bonarian participation in public and private sector employment. In addition, out of concern for the strong ties between the Templars and previous Albertian administrations, the Bonarian government passed legislation, the *State Security Act*, which dissolved the Templars. This occurred despite efforts to impugn the legality of the new law before the Albertian-dominated courts.

Notwithstanding their legal dissolution as a State entity, the Templars continued to carry on activities outside the official sphere of the State, with the self-proclaimed mandate to prevent whatever the Templar leadership considered to constitute a threat to the survival of Alboria. In order to further this mandate, in 1992, the Templars developed a military branch and a political branch. The political branch, or "Sage Templars", met as a Masonic society and was joined by some Albertian intellectuals. The military branch, or "Templar Warriors", organized local armed

squads to fight common crime, which the Templars attributed primarily to members of the lower class Bonarian population.

Subsequently, in 1994, the Inter-American Commission on Human Rights began receiving complaints alleging killings, torture and other atrocities perpetrated by the Templars against members of Alboria's Bonarian population. In 1995, Alboria invited the Commission to conduct an *in loco* visit in its territory. During the visit, the Commission met some members of the Sage Templars and examined the effects of the Templar Warrior's local squads in light of the rights and freedoms protected under the American Convention on Human Rights. In its report on the visit, the Commission concluded that the Templar's activities amounted to paramilitarism, and recommended that the State investigate, prosecute and punish those involved in atrocities committed against members of Alboria's Bonarian population.

Consequently, in 1996 Parliament amended the *State Security Act* to outlaw any activities by the Templar Warriors and the Masonic Society created by the Sage Templars. The constitutionality of the amended legislation was successfully challenged before the Albertian-dominated courts, however, and the amendments were struck down. In response, some political Bonarian forces conducted demonstrations and strikes in order to show discontent with the continuation of the Templar's "police" activities. The Bonarian-controlled Government decided to employ the Police, and later the Armed Forces, to suppress the Templar's activities. The Templar Warriors reacted with sporadic attacks against members of the Government and the Armed Forces.

Late in 1996, the Sage Templars approached the Government to negotiate a solution to the conflict. When the Government refused to hold talks, the Templar Warriors decided to adopt a radical agenda, which advocated the use of violence to further the Templar's primary objective, namely to be recognized as the guardian of Alboria's security. Terrorist incidents, including bombings and kidnappings of Government officials and industrial leaders, escalated as the Templar Warrior's military organization and strength grew. The Government in turn militarized its reactions to the Templar Warrior's activities.

In 1997, the state of hostilities between the Alborian Government and the Templars was generally recognized by the international community as one of internal armed conflict.

Background to the Current Problem

The Alborian Government was aware that a significant base of support for the Sage Templars was located at the State's universities. In this connection, the State had identified a number of prominent Albertian intellectuals, including Professor Victoria Riel Guevara, as members of the Masonic society created by the Sage Templars.

On September 11, 1997, the State's military intelligence intercepted an e-mail communication from a source at the University of the City of Alboria, in Alboria's Capital. The message expressed support for the Templars, and looked forward to a "new order" for Alboria. The State traced the source of the e-mail to an account registered to Professor Riel Guevara, and traced the destinations of the e-mail to two locations: a secondary school located in a suburb of the City of Alboria; and an air base north of the city that had previously been captured by the Templar Warriors.

In the morning of Thursday, October 16, 1997, the Alborian army stormed the University of the City of Alboria and arrested faculty members and students, including Professor Riel

Guevara. The army also confiscated Professor Riel Guevara's computer, held her incommunicado for 15 days, and interrogated her regarding her e-mail communication and her role with the Templars.

On the afternoon of the same day, the Alborian armed forces attacked the air base and the secondary school with air and ground forces. In the course of the attack, the State discovered that fifty Templar Warriors had assembled at the air base to mount strategic attacks against key targets in the City of Alboria during independence day celebrations planned for the following day. The State also discovered that twenty students under the age of fifteen were present at the secondary school, and that five of the students were armed. As a result of the attack on the air base, thirty Templar Warriors were killed by Alborian armed forces, and twenty Alborian armed forces were killed by Templar Warrior forces. The remaining Templar Warriors were taken into custody by the Alborian armed forces. As a result of the attack on the secondary school, three armed students and two unarmed students were killed by Alborian armed forces, and one Alborian soldier was killed by an armed student. The surviving armed students were taken into custody by the Alborian armed forces.

On November 1, 1997, Professor Riel Guevara was charged with treason, and the Templar Warriors and the armed students were charged with treason and the murders of the twenty-one Alborian armed forces, all under the existing Alborian *Criminal Code*. Requests by the defendants' attorney's for adjournments were denied, the defendants were tried before a judge and jury from December 1 to December 7, 1997, and on December 8, 1997, all of the defendants were convicted and sentenced to death. Alborian law provided that the defendants could appeal their convictions and sentences, with leave of the Supreme Court of Alboria. The defendants filed petitions for leave to appeal on December 8, 1997, but as of today, those petitions have not been determined.

Proceedings before the Inter-American Commission on Human Rights

On January 15, 1998, the Alborian Human Rights League (AHRL) filed a petition with the Commission, alleging that Alboria had violated Articles 2, 4, 5, 7, 8, 13 and 25 of the American Convention on Human Rights, Article 3 common to the 1949 Geneva Conventions, Articles 4, 5, 6 and 13 of Protocol II to the 1949 Geneva Conventions, Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, and Articles 6, 37 and 38 of the U.N. Convention on the Rights of the Child, in relation to:

- the arrest and detention of Professor Riel Guevara and her subsequent trial, conviction and sentencing;
- the killing of Templar Warriors and armed and unarmed students during the October 16, 1997 hostilities; and
- the detention, trial, conviction and sentencing of the surviving Templar Warriors and the armed students.

In a report adopted in September 1998, the Commission found the case admissible and placed itself at the disposal of the parties for the purpose of reaching a friendly settlement of the matter. Attempts to reach a friendly settlement failed, and on September 30, 1999, the Commission adopted a report in accordance with Article 50 of the American Convention. In its Report, the Commission found Alboria's actions to be inconsistent with Article 3 common to the 1949 Geneva Conventions and Articles 4, 5, 6 and 13 of Protocol II to the 1949 Geneva Conventions, in three respects: the killing of two Templar Warriors during the October 16, 1997 hostilities, in light of evidence that these Templar Warriors died while in the custody of the State;

the killing of the unarmed students; and the detention, trial, conviction and sentencing of Professor Riel Guevara, the surviving Templar Warriors and the armed students. The Commission also concluded that Alboria was responsible for violations of:

1. Articles 2, 4, 5, 7, 8, 13 and 25 of the American Convention on Human Rights and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, in relation to the arrest and detention of Professor Riel Guevara and her subsequent trial, conviction and sentencing;
2. Articles 4 and 5 of the American Convention on Human Rights, Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, and Articles 6, 37 and 38 of the U.N. Convention on the Rights of the Child, in relation to the killing of the two Templar Warriors and the unarmed students during the October 16, 1997 hostilities; and
3. Articles 2, 4, 5, 7, 8, and 25 of the American Convention on Human Rights, Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, and Articles 6, 37 and 38 of the U.N. Convention on the Rights of the Child, in relation to the detention, trial, conviction and sentencing of the surviving Templar Warriors and the armed students.

Proceedings Before the Inter-American Court of Human Rights

On December 15, 1999, the Commission referred the Victoria Riel Guevara et al. matter to the Inter-American Court of Human Rights, and on December 20, 1999, the Court notified Alboria of the Commission's Application. In its Application, the Commission alleged the same violations as it found in its Article 50 report, as well as the actions inconsistent with Article 3 common to the 1949 Geneva Conventions and Articles 4, 5, 6 and 13 of Protocol II to the 1949 Geneva Conventions, as set out above.

On January 30, 2000, Alboria filed preliminary objections with the Court in accordance with Article 36 of the Court's Rules of Procedure, in which it raised three issues:

1. the failure of the alleged victims to exhaust domestic remedies in respect of their convictions and sentences, by virtue of their outstanding petitions for leave to appeal before the Supreme Court of Alboria;
2. the absence of jurisdiction *ratione materiae* on the part of the Commission and the Court to consider and apply the Inter-American Torture Convention, and the U.N. Convention on the Rights of the Child;
3. the absence of jurisdiction *ratione materiae* on the part of the Court to consider and apply Article 4 of the American Convention, in the light of the terms established by Alboria when it accepted the contentious jurisdiction of the Inter-American Court of Human Rights, which are reproduced below:

Pursuant to Article 62 of the American Convention, Alboria hereby recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation and application of the American Convention, with the exception of situations involving the interpretation and application of Article 4 of the American Convention in times of war, in which situations the Court shall not have jurisdiction and which shall be governed exclusively by the laws and customs of war, including the 1949 Geneva Conventions and the 1977 Protocols additional thereto.

The Inter-American Court has scheduled a hearing on both the preliminary objections and the merits of the case.

Relevant Instruments - Alboria

Alboria is a party to the following instruments:

1. Charter of the Organization of American States, ratified in 1960.
2. American Convention on Human Rights, ratified in 1970; Declaration accepting contentious jurisdiction of the Inter-American Court of Human Rights deposited 1980, subject to the terms reproduced above.
3. Inter-American Convention to Prevent and Punish Torture, ratified in 1985.
4. First, Second, Third and Fourth Geneva Conventions of 1949, ratified in 1950.
5. Protocols I and II of 1977 to the 1949 Geneva Conventions, ratified in 1980.
6. U.N. Convention on the Rights of the Child, ratified in 1990.