

Chapter Five

PROBLEMS OF SOCIO-POLITICAL JUSTICE

THE VITAL PERSPECTIVE

The values of freedom, equality, participation, and equity have powerful resonance in the international community and provide important yardsticks for the measurement of authority and legitimacy. But the concept of territorial sovereignty is regularly deployed to justify degrading social arrangements and repressive legal orders. Around the globe, we see governments kill, deport, incarcerate, rape, and torture. Non-state actors such as corporations and private military groups, too, are responsible for major human rights violations. Civil and political liberties, as well as social, economic, and cultural rights, are denied on a widespread basis, affecting particularly vulnerable groups—for example, indigenous peoples, women and children, and homosexuals. Prisoners of political and religious conscience fill many of the world's jails. Severe forms of racism and sexism persist everywhere. The present world order linchpin of territorial nationalism can itself operate as a form of discrimination and repression.

Problem 5-1

Ethnic Conflict and Its Consequences in Slavia, Candia, and Corcyra

SECTION 1. FACTS

Slavia is a small republic in southeastern Europe comprised mainly of two populations with distinct linguistic and religious traditions. The Slavians majority is Orthodox Christian, comprises 75% of the population, and tends to live in the industrialized northern part of the country. The Illyrians are Muslim and live mainly in the poorer agricultural south. For almost 50 years after the formation of Slavia following World War II, the two groups lived in relative harmony. Slavian-dominated communist governments extended considerable autonomy to the Illyrians in respect of education, health, labor, police, and other matters of essentially local concern. Illyria was in fact a self-governing province of Slavia during this time.

Candia is an island republic some 1,000 kilometers to Slavia's south in the Mediterranean Sea. It has a prosperous economy, a low unemployment rate, a relatively homogenous ethnic population and a stable political culture. Ninety percent of Candia's population identify as Orthodox Christians.

Approximately half way between Slavia and Candia lies the smaller island state of Corcyra in the Ionian Sea, recently accepted as a member of the United Nations. Corcyra's environment is almost completely despoiled by phosphate mining conducted over the last century by Candian mining companies. Corcyra is deeply in debt and its economy is in tatters. It depends largely on economic support from Candia.

In 1989, coinciding with the collapse of communism and the emergence of ethnic rivalries elsewhere in Eastern Europe, a new Slavian government revoked Illyria's autonomy and officially supplanted Illyrian with Slavian governance relative to all matters local in Illyria. Almost ever since, a savage conflict has raged in Slavia between its two major ethnic groups—Slavians and Illyrians.

In the last few years, driven by its resurgent nationalism, Slavia's control of Illyria has taken a severe toll on Illyria and its majority Muslim population. In addition to revoking the self-governing status that Illyria enjoyed under communist rule, Slavia has pursued a host of policies hostile to the Illyrians. First it ignored ongoing demands of the League for a Democratic Illyria (LDI) for such reforms as one-person-one-vote in local elections, the removal of gerrymandered electoral districts, and the nondiscriminatory allocation of public services. Next, it proclaimed fast-growing separatist sentiments and activities among the Illyrians to constitute "a public emergency which threatens the life of the Slavian nation"; and, in response, it adopted and promulgated an Internal Security Act (ISA) outlawing the LDI and allowing for the indefinite detention of suspected "anti-Slavian terrorists" without charge or trial. Most recently, it has instituted a campaign of systematic discrimination, harassment, and repression against Illyria's Muslim majority, designed either to force it to submit to Slavian rule in all important respects or to quit the region and migrate elsewhere. Most observers agree that, by whatever means, the expulsion from Illyria of Illyria's Muslim majority is uppermost in the Slavian government's mind. "Slavia for the Slavians" is the Slavian government's most constant refrain.

Slavia has ordered the isolation and confinement of hundreds of Illyrians economists, political scientists, and other social theorists, replaced hundreds of Illyrian faculty with Slavian professors at The University of Illyria, dismissed thousands of Illyrian school teachers in favor of Slavian school teachers, and otherwise limited the intellectual and academic life of Illyria's majority population. Lodging at the university's dormitories has been denied to Illyrian students, and a sharp cut in the number of Illyrian students was

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recently authorized. Discriminatory policies now allow only 1,500 Illyrian youths to enroll for the first year of university study, and then to attend classes held only in Slavian; simultaneously, thousands of Slavian students from outside Illyria are being subsidized to pursue their university studies there.

Further, the Slavian government has initiated summary trials of Illyrian political activists, sentenced mass numbers of them to hard labor in prison for "misdemeanors with political elements," and killed several hundred unarmed Illyrian demonstrators protesting these trials and sentences. In these and other ways, Slavia has restricted freedom of speech and association in Illyria. Since the LDI's separatist activities began, Slavian internal security procedures have made it illegal for more than four Illyrians to gather anywhere (excepting families). "Anti-terrorist patrols" by paramilitary police regularly harass Illyrians on Illyrian streets and highways, demanding identification papers and breaking up any groups of four or more with threats of arrest. Police surveillance and body searches of Illyrians, however innocent their conduct, are now routine; and at night especially the Slavian police regularly enter Illyrian homes and businesses without warrants to investigate "anti-Slavian activities." Warrantless arrests often result from these encounters, as do also hostage-takings, forced evictions, and repeated accounts of physical abuse, even torture.

There are reliable reports of Slavian soldiers and civilian locals going on rampages and raping hundreds—some say thousands—of Illyrian women and girls, the apparent intent being not only generally to rape Illyrian females, but also, by virtue of the Muslim belief that one cannot be a Muslim if one is not born of a Muslim father, to reduce Illyria's Muslim population. When confronted by Amnesty International with these allegations,^a the Slavian government denied the existence of large numbers of rapes as "absurd," but declared that such "indiscretions" would be strongly condemned if their occurrence could be proven. Rapes continue to such a degree, however, that Illyrian women and girls now venture out-of-doors only with male escorts.

Compounding the situation, Illyrian physicians and medical staff have been summarily dismissed from the Faculty of Medicine at The University of Illyria and other health facilities in Illyria; Illyrian medical workers have sustained much violence; and gynecology and obstetrics departments have been left without a single Illyrian physician or nurse. As a result, there are almost no medical personnel available to aid the many Illyrian women and girls who have been raped. Illyrian women and girls now usually deliver their babies without medical assistance and under poor sanitary conditions. The Illyrian infant mortality rate has soared.

a. Amnesty International (AI) is a London-based human rights organization and recipient of the 1977 Nobel Peace Prize. See *infra* Discussion Note/Question 11, at 600.

Finally, the Slavian government has sought to erode the economic base of Illyria's Muslim majority. For "security" reasons, it has dismissed all of its Illyrian employees (including from the police forces in the area). Labor unions controlled by Illyrian workers have been repeatedly threatened and forced into clandestine operation when their offices have been raided and ransacked. Slavian businesses have been ordered to retain only those Illyrian workers who will sign "individual agreements" proclaiming their loyalty to the Slavian state and otherwise to dismiss Illyrian workers in favor of Slavian workers. And while Slavian businesses in Illyria are assisted by substantial grants-in-aid, Illyrians are now consistently denied the right to start businesses there and Illyrian marketplaces and street vendors are increasingly raided and stripped of their money and goods. The result has been to erode severely the purchasing power of Illyrians, many of whom have been forced into subsistence living.

All of which has fit Slavian governmental policy. The Slavian government, keenly interested in the rich soil of Illyria, has worked to force Illyrian farmers out of their homes and off their land, paying Slavians to settle in their stead and subsidizing Slavian housing whenever needed. The result: Illyrian farmers and others have been fleeing Illyria in droves, causing Illyria's ethnological structure to change dramatically. The French newspaper *Le Monde*, citing also the forced eviction of urban Illyrians from their homes, has called this "resettlement program" an "instance of 'ethnic cleansing.'"

Many Illyrians, despairing of their future in Slavia, have attempted to flee. Mainland neighbors of Slavia have been unwilling to accept the large numbers of Illyrian asylum seekers crossing into their countries. The unwillingness stems both from anxiety about the economic and social cost of resettlement of the Illyrians and from the inevitable antipathy this will cause in political relations with Slavia. Slavia's neighbors simply refuse entry to all Illyrians and forcibly return any Illyrians who cross the border illegally. The asylum seekers are then held under the ISA as anti-Slavian terrorists. These practices encourage Illyrians to devise other routes to new lives and increasing numbers to hire or purchase small boats in Slavian coastal ports and set sail for Candia. A lively trade in people-smuggling has thus developed along the coast as entrepreneurs exploit the Illyrian desire to leave Slavia, charging thousands of US dollars for each place in boats. The fleeing Illyrians claim refugee status as soon as they reach Candia.

The arrival of the Illyrian "boat people" (as they are termed in the Candian press) has caused intense alarm in Candia. The Muslim Illyrians are regarded as a threat to Candian social homogeneity and a drain on the Candian economy. The Candian Prime Minister described the Illyrians as a potential source of terrorist attacks because of their adherence to Islam. "Despite pressure from the United Nations to be politically correct," he told Candia's Parliament, "we would be foolish to deny that Islam was the religion of the September 11 terrorists and that many of its followers have applauded their wanton and cowardly acts." The Candian Parliament then acted quickly

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b. See *infra* 591.

to declare all coastal land and sea below the high water mark as outside Candia's "immigration zone" and empowered the Candian Coast Guard to tow any boats in Candian waters back to the Slavian coast. Many Illyrians have been forcibly returned to Slavia in this way.

Because of criticism of these policies by Candian civil society, Candia entered into an agreement with Corcyra to house some of the Illyrian boat people. In return for significant financial assistance, Corcyra agreed to build temporary shelters for the Illyrians until their future can be determined. Reports from Corcyra are that the conditions of the temporary shelters are appalling, with inadequate sanitation. Corcyra refuses to grant entry visas to the media or human rights organizations to inspect the shelters.

Meanwhile Illyrians who have already arrived in Candia are being held in makeshift detention camps far from population centers. Candian law is amended to allow their detention until their claims to refugee status are determined. This process can take several years. The indefinite detention has caused severe trauma, especially among Illyrian children.

Assisted by Amnesty International, Illyrians inside Slavia have petitioned the United Nations Sub-Commission on the Promotion and Protection of Human Rights^b about their treatment. Groups of detainees held in both Candia and Corcyra have appealed to the Organization for Security and Co-operation in Europe (OSCE) about the nature and conditions of their detention. And the United States and the United Kingdom have begun proceedings in the International Court of Justice, arguing that Slavia has violated the 1948 Convention on the Prevention and Punishment of Genocide. Meanwhile the Prosecutor of the International Criminal Court has begun investigations into the large-scale rape of Illyrian women and girls in Slavia.

Slavia and Candia as well as Corcyra are members of the United Nations. Also, all three are party to the 1951 Refugee Convention and its 1967 Protocol and are members of the Organization for Security and Co-operation in Europe. All countries are parties to the 1948 Convention on the Prevention and Punishment of Genocide and the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights, although not to the Optional Protocol to the latter.

SECTION 2. PURPOSE OF PROBLEM

A primary purpose of this problem is to introduce, as a pivotal dimension of world order reform, the development of human rights prescription and enforcement in the years since the UN Charter of 1945 and the Universal Declaration of Human Rights of 1948. Before World War II and the founding of the United Nations, the bulk of international human rights law, except in relation to the protection of certain linguistic and religious minorities, centered upon the treatment to be accorded alien nationals living or traveling abroad (under the rubric of "the diplomatic protection of aliens)," and the

b. See *infra* Discussion Note/Question 1, at 591.