IN THE INTERNATIONAL COURT OF JUSTICE

THE CASE CONCERNING THE VESSEL *THE MAIRI MARU*

2005

Republic of Appollonia

v.

Kingdom of Raglan

MEMORIAL FOR THE APPLICANT

THE CASE CONCERNING THE VESSEL *THE MAIRI MARU*

Table of Contents

TABLE OF AUTHORITIES

Cases and Arbitrations

Treatises

U.N. Documents

Articles

D.D. Caron, *The Basis of Responsibiliy: Attribution and Other trans-Substantive Rules, in* THE IRAN-UNITED STATES CLAIMS TRIBUNAL: ITS CONTRIBUTION TO THE LAW OF STATE RESPONSIBILITY 109 (R. LILICH & D. MAGRAW eds., 1998) 6, 26

Donald K. Anton, *Law for the Sea's Biological Diversity*, 36 COLUM. J. TRANSNAT'L L. 341 (1997) 27

Donald R. Rothwell, *Navigational Rights and Freedoms in the Asia Pacific Following Entry Into Force of the Law of the Sea Convention*, 35 VA. J. INT'L L. 587 (1995)18, 23

F. Przetacznik, *The International Responsibility of States for the Unauthorized Acts of their Organs.*, 1 SRI LANKA JOURNAL OF INTERNATIONAL LAW 151 (1989) 26

Geoffrey Marston, *Armed Intervention in the 1956 Suez Canal Crisis: The Legal Advice Tendered to the British Government*, 37 INT'L & COMP. L.Q. 773 (1988) 10

Gordon Christenson, *The World Court and Jus Cogens*, 81 AM. J. INT'L L. 93 (1987) 2

Gunther Handl, *Balancing of Interests and International Liability for the Pollution of International Watercourses: Customary Principles of Law Revisited*, 13 CAN. Y.B. INT'L L. 156 (1975) 29, 30

Gunther Handl, *State Liability for Accidental Transnational Environmental Damage by Private Persons*, 74 AM. J. INTL. L. 525 (1980); 26, 28

Hans Blix, *The Protection of the Environment and International Law*, ACADEMIE DE DROIT INT'L, COLLOQUIUM (1975) 26

Harvard Research in International Law, *Commentary to the Draft Convention on Piracy*, 26 AM. J. INT'L L. SUPP. 749 (1932) 2

Ian Brownlie, *A Survey of International Customary Rules of Environmental Protection*, 13 NAT. RESOURCES J. 179 (1973). 16

Jon M. Van Dyke, *Sea Shipment of Japanese Plutonium under International Law*, 24 OCEAN DEV. & INT'L L. 399 (1993). 23

Jon M. Van Dyke, *The Legal Regime Governing Sea Transport of Ultrahazardous Radioactive Materials*, 33 OCEAN DEV. & INT'L L. 77 (2002). 23

L. Condorelli, *.L.imputation à l.Etat d.un fait internationalement illicite: solutions classiques et nouvelles tendances.*, 189 RECUEIL DES COURS 9 (1989) 26

Lensing, J.A.W., "The Netherlands," at 51, *in* INT'L ENCYCLOPEDIA OF LAWS, Vol. 3 (Dupont & Fijnaut eds., 1993) 4

Louis B. Sohn, *Generally Accepted International Rules*, 61 WASH. L. REV. 1073 (1986) 17

Louis B. Sohn, *The Stockholm Declaration*, 14 HARV. INT'L L.J. 423 (1973) 30

Lucius Conrad Caflisch, *Some aspects of Oil Pollution from Merchant ships*, 4 ANNALS OF INT'L. STUDIES 213 (1973) 26

M. Cherif Bassiouni, *A Functional Approach to General Principles of International Law*, 11 MICH. J. INT'L L. 768 (1990) 2

Maki Tanaka, *Lessons from the Protracted MOX Plant Dispute: A Proposed Protocol on Marine Environmental Impact Assessment to the United Nations Convention on the Law of the Sea*, 25 MICH. J. INT'L L. 337 (2004) 22, 23, 27

Malvina Halberstam, *International Maritime Navigation and the Installations on the High Seas*, *in* 1 INTERNATIONAL CRIMINAL LAW, M. CHERIF BASSIOUNI (3d. ed., 1999) 2

Malvina Halberstam, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety*, 82 AM. J. INT'L L. 269 (1988) 2

Martin Davies, *Australia's Tampa Incident: The Convergence of International and Domestic Refugee and Maritime Law in the Pacific Rim*, 12 PAC. RIM L. & POL'Y J. 109 (2003) 9, 11

Nsereko, D.D.N., "Uganda," *at* 280-1, *in* INT'L ENCYCLOPEDIA OF LAWS, Vol. 4 (Dupont & Fijnaut eds., 1993) 4

Nugroho Wisnumurti, *Archipelagic Waters and Archipelagic Sea Lanes*, *in* INTERNATIONAL NAVIGATION: ROCKS AND SHOALS AHEAD? 204 (Van Dyke et al. eds., 1988) 20

P.W. Birnie, *Piracy Past, Present and Future*, *in* PIRACY AT SEA 131 (Eric Ellen ed., 1990) 1

Peter A. Bernhardt, *The Right of Archipelagic Sea Lanes Passage: A Primer*, 35 VA. J. INT'L L. 719 (1995) 17, 19, 21

Philippe Sands, *Environment, Community, and the Law*, 30 HARV. INT'L L. J. 393 (1989) 15

Prosper Weil, *Towards a Relative Normativity in International Law?*, 77 AM. J. INT.'L L. 413 (1983) 14

Raul A. F. Pedrozo, *Transport of Nuclear Cargoes by Sea*, 28 J. MAR. L. & COM. 207 (1997) 22, 23

Robert Beckman, *Combating Piracy and Armed Robbery against Ships in Southeast Asia: the Way Forward*, 33 OCEAN DEV. AND INT'L L. 317 (2002) 3

Treaties

Statutes

Other Authorities

STATEMENT OF JURISDICTION

The Republic of Appollonia and the Kingdom of Raglan submit the present dispute to this Court by Special Agreement, dated May 15, 2004, pursuant to article 40(1) of the Court's Statute. The parties have agreed to the contents of the Compromis submitted as part of the Special Agreement. In accordance with article 36(1) of the Court's Statute, each party shall accept the judgment of this Court as final and binding and shall execute it in good faith in its entirety.

QUESTIONS PRESENTED

I. Has Raglan breached its obligation under international law to suppress and prevent piracy?

II. Are the piratic acts of Thomas Good attributable to Raglan?

III. Is Raglan responsible under international law for the attack on and wreck of *The Mairu Maru?*

IV. Did Raglan violate international law by scuttling *The Mairi Maru* and therefore liable for damages?

V. Does Raglan have standing to seek compensation for the environmental damage caused to the Norton Shallows?

VI. Did Appollonia violate international law by not providing notice or seeking consent from Raglan for the shipment of MOX through the waters surrounding the Raglanian archipelago?

VII. Did Appollonia comply with norms of international law regarding the protection of the marine environment?

STATEMENT OF FACTS

The Republic of Appollonia is a small coastal nation which relies on nuclear energy as its substantial source of power. Nuclear energy production yields a significant amount of plutonium as a by-product. The Apollonian power plant then mixes the plutonium with depleted uranium, to produce fresh mixed oxide fuel ("MOX"). Appollonia anticipated that MOX would then be used as a nuclear fuel source. In 1997, the Appollonian Ministry of Energy entered into a five-year agreement to sell surplus MOX to Maguffin Atomic Recycling Company. This agreement was reported to the International Atomic Energy Agency ("IAEA") by both Appollonia and Maguffin, as were all shipments of MOX. (Compromis, ¶¶ 1, 3-5).

Transporting MOX to Maguffin, require ships to travel south, passing through the archipelagic nation of Raglan. In 1995, ships passing through the Raglanian archipelago became prey to several bands of technologically-advanced pirates. During the next few years the frequency of the pirate attacks increased. The International Maritime Bureau ("IMB") reported forty distinct pirate attacks against ships in Raglan's archipelago in 1997 alone. In 1998, the Insurers of Lading and Shipping Association ("ILSA") expressed concern regarding the routes through the waters surrounding Raglan's archipelago. Shipping traffic through Raglan's islands severely decreased. (Compromis, ¶¶ 6-8).

Thereafter, the IAEA reviewed Appollonia's nuclear program and found it in compliance with international standards. However, the IAEA noted that Appollonia does not give notice to Raglan when transporting MOX. Appollonia provides notice of their shipments to the IAEA and Maguffin. The Appollonian Minister of Energy stated that "in order to maintain the highest level of security," Appollonia does not publicize the shipments or identify the cargo. Until the attack on *The Mairi Maru,* 20 shipments had been transported without incident (Compromis, ¶¶ 9-10).

In 1999, Raglan established an "anti-piracy program," which provides ships with a Raglanian Navy escort at the request of any vessel traversing the water's surrounding the archipelago. While ILSA's concern regarding pirate attacks had lessened, pirate attacks continue at night in the western edge of the archipelago. In 2001, Raglan hired and trained civilians to serve interchangeably with naval officers as pilots of Raglan's anti-piracy program. (Compromis, ¶ ¶ 11-13).

On July 26, 2002, *The Mairi Maru,* a privately-owned, Appollonian-flagged vessel, left Appollonia for Maguffin. *The Mairi Maru* was carrying several canisters of MOX as it had on six previous occasions. The route planned by *The Mairi Maru*'s Captain used Raglan's designated sea lanes for passage. *The Mairi Maru* is one of Appollonia's largest double-hulled ocean-going cargo ships and was. On July 27, an intense storm delayed *The Mairi Maru,* causing the ship to approach Raglanian waters three hours before dusk. The Captain, experienced in transporting nuclear materials, radioed the Raglanian Navy and requested a pilot. The assigned pilot, a civilian named Thomas Good, along with two men identified as his assistants, boarded the ship on the High Seas. Consequently, Good commandeered *The Mairi Maru,* locked the crew in the galley and steered the vessel out of the sea lanes. Good and his cohorts removed the ship's safe and all of the navigation and communication equipment. They then disabled *The Mairi Maru*'s aft propeller shaft, rendering the ship uncontrollable. Good did not disturb the MOX, but left the ship on a course toward international waters. (Compromis, ¶¶ 14, 16-18; Clarifications ¶¶ 10-11).

After drifting powerlessly, another severe storm altered the course of *The Mairi Maru,* forcing it aground on the Norton Shallows, located wholly outside Raglanina territorial waters and its Exclusive Economic Zone. Damage to the ship's hulls ruptured the secure compartment

holding the MOX canisters, which were also damaged. The canisters leaked MOX pellets onto the sandbar and into the surrounding waters. The next day a Raglanian Navy patrol boat spotted *The Mairi Maru*. The Captain of *The Mairi Maru* reported the leaking MOX to the commander of the vessel. Some members of *The Mairi Maru*'s crew died while others exhibited signs of acute radiation syndrome. (Compromis, ¶¶ 19-20; Corrections ¶ 4).

On July 31, Raglanian Prime Minister Price notified the President of Appollonia, Judith Stark, of *The Mairi Maru* incident. Mr. Price blamed Appollonia for the damage and demanded Appollonia to pay for the cleanup of the sandbar and the surrounding waters. Raglan also demanded compensation for the economic losses derived from activities largely conducted by private Raglanian firms. Those activities provided Raglan with more than 80 million Euro in tax revenue annually. On August 4, Raglan announced its intention "to put this material on the deep ocean floor." Later that week Raglan secured and encased the MOX canisters to prevent further leakage. They then scuttled *The Mairi Maru* and the MOX canisters sinking them to a depth of over 9000 meters. (Compromis, ¶¶ 2, 21-24; Clarifications ¶ 2).

The owners and insurers of *The Mairi Maru*, as well as the surviving crew members and the families of the deceased crew initiated civil lawsuits against the government of Raglan for 15 million Euros for the loss of *The Mairi Maru.* Both Raglanian courts dismissed the actions based on judicial immunity traditionally enjoyed by the Raglanian armed forces for actions taken as part of national defense activities. (Compromis, ¶¶ 24, 30-31).

Taking notice of the increased tension between the two nations, the Regional Organization of Nations, in July 1, 2003, called upon Raglan and Appollonia to bring this case before the International Court of Justice to resolve the dispute. The nations agreed, and the submissions of both parties followed. (Compromis ¶¶ 30-33).

SUMMARY OF PLEADINGS

I. Raglan is responsible for the attack on and the wreck of *The Mairi Maru*. Customary international law dictates that states have an obligation to prevent piracy within its waters. Raglan failed to discharge this obligation by not addressing the piracy plaguing its waters for years. Even when Raglan instituted an anti-piracy program, it negligently administered it providing an opportunity for Thomas Good to commandeer *The Mairi Maru*. Moreover, as required by principles of state responsibility, Good's actions are attributable to Raglan. Thomas Good was an agent of Raglan hired and trained by the Raglanian Navy. Good's actions remain attributable to Raglan even if they are *ultra vires* because he was acting under the pretence of his status as a Raglanian naval officer.

II. Raglan violated international law by scuttling of *The Mairu Maru* and is therefore responsible for the loss of the ship. *The Mairi Maru* ran aground in the Norton Shallows, wholly outside Raglan's territorial waters and Exclusive Economic Zone. Private ships sailing the High Seas are subject to the exclusive jurisdiction of the state whose flag they fly and are an extension of the territory of that state. Therefore, Raglan's actions are a violation of Appollonia's territorial sovereignty. Additionally, the wrongfulness of Raglan's actions may not be precluded by the doctrine of necessity.

III. Raglan lacks standing to seek remuneration for alleged economic losses associated with the wreck of the *The Mairu Maru* and the consequent environmental damage. Standing requires a cognizable legal interest, which Raglan does not have. Principles of territorial sovereignty do not provide Raglan with standing. The Shallows are *terra nullius*, the waters are *res communis*, and Raglan has taken no official state action related to the area in question. Further, Raglan may not assert standing based on tax losses because they are too remote to grant standing under

international law. Moreover, Raglan cannot bring a claim on behalf of all nations for environmental damage to the High Seas. Finally, none of the principles in the 1982 Convention, the Basel Convention or the Stockholm Declaration provide Raglan with standing. Appollonia is not party to these treaties and the principles enumerated therein have not risen to the level of customary international law.

IV. Appollonia did not violate international law by transporting MOX through the Raglanian archipelago. The waters surrounding the Raglanian archipelago are High Seas and thus freely navigable by all vessels. Raglan may not rely on the archipelagic waters regime in the 1982 Law of the Sea Convention. Appollonia is not party to the Convention, nor has it risen to customary law. State practice and *opinio juris* evidence an unwillingness by shipping states to submit to any regulatory scheme that reduces navigation freedoms.

Regardless of the 1982 Convention's applicability to this case, Appollonia has met all its requirements. Under the 1982 Convention, when Raglan designated sea lanes, it lost the right to interfere with passage through its lanes, and thus could not require notice or consent from Appollonia about *The Mairi Maru*'s cargo. Additionally, Appollonia met its obligation by notifying the International Atomic Energy Agency and Maguffin. Appollonia's choice to maintain silence was reasonable considering the security risks presented by its MOX shipment.

Also, Appollonia cannot be held liable for environmental damage to the Shallows. The Captain and crew of the *The Mairu Maru* are not state agents; hence, their actions cannot be attributable to Appollonia. Furthermore, Appollonia has not breached any duties under customary international law. International law merely provides a general duty to protect the marine environment. Due diligence is the appropriate standard of care and Appollonia has met this burden.

PLEADINGS

I. RAGLAN IS RESPONSIBLE UNDER INTERNATIONAL LAW FOR THE ATTACK AND THE WRECK OF *THE MAIRI MARU*

A. Raglan has breached its obligations under international law to suppress and prevent piracy.

Stories of pirates quickly call to mind images of grizzled, salty men, with wooden legs and eye patches, flying flags emblazoned with skull and crossbones come to mind. Historically, the term "piracy" has been applied to acts of murder, plunder and other villainous deeds which have transpired over centuries of mankind's history. However, this crime continues to exist in modern times. Reported attacks against commercial ships have tripled over the past decade.[1] Piracy poses grave threats to the safety of seafarers, ships and the international shipping industry. "A pirate is a foe of all mankind because he commits hostilities upon the subjects and property of any and all nations, without any regard to right or duty . . . of public authority."[2] Therefore, pirates are *hostis humanis generis*, enemies of the human race.[3]

Customary international law imposes a duty upon all states to prevent and suppress piracy. As codified in article 14 of the 1958 Geneva Convention on the High Seas ("1958 Convention"), every state has the duty to "cooperate to the fullest possible extent in the

---

[1] *Report on Oceans and the Law of the Sea*, U.N. GOAR, 53d Sess., Doc. A/RES/53/32 (2003); *Reports on Armed Robbery and Armed Robbery against Ships*, IMO Doc. MSC.4/Circ.32 (2002).

[2] United States v. Brig Malek Adhel, 43 U.S. 210, 232 (1844) (Story, J.).

[3] IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 238 (2003); P.W. Birnie, *Piracy Past, Present and Future*, *in* PIRACY AT SEA 131, 136 (Eric Ellen ed., 1990); BARRY H. DUBNER, THE LAW OF INTERNATIONAL SEA PIRACY: DEVELOPMENTS IN INTERNATIONAL LAW 3 (1980); *In re* Piracy Jure Gentium, 1934 A.C. 586, 598, *reprinted in* 3 BRIT. INT'L L. CASES 836, 842 (1965); Bolivia v. Indemnity Mutual Maritime Assurance Co., Ltd., 1 K.B. 78, 799 (Eng. C.A. 1909).

repression of piracy . . . ."[4] The commentary to the International Law Commission's draft article 38, as adopted in article 14 of the Geneva Convention, states: "[a]ny State having an opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law."[5] This means that a state which fails to discharge this duty is liable for "the payment of reparation to other states whose shipping was molested by the pirates in question."[6]

Some international crimes rise to the level of peremptory norms or *jus cogens* crimes. These norms extend to only a handful of crimes, including the prohibitions against the slave trade, piracy and genocide.[7] As a corollary, this heightened duty to suppress and prevent piracy trumps all other obligations under international law.[8]

---

[4] 1958 Geneva Convention on the High Seas, Apr. 29, 1958, art. 14, 450 U.N.T.S. 82 [hereinafter 1958 Convention]; United Nations Convention on the Law of the Sea, Dec. 10, 1982, art. 100, 1883 U.N.T.S. 397 [hereinafter UNCLOS]; Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, art. 13, 1678 U.N.T.S. 221; Harvard Research in International Law, *Commentary to the Draft Convention on Piracy,* 26 AM. J. INT'L L. SUPP. 749, 750 (1932).

[5] Malvina Halberstam, *International Maritime Navigation and the Installations on the High Seas, in* 1 INTERNATIONAL CRIMINAL LAW, M. CHERIF BASSIOUNI (3d. ed., 1999) *citing* 2 Y.B. INT'L L. COMM'N at 282 (1956).

[6]Malvina Halberstam, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety*, 82 AM. J. INT'L L. 269, 283 (1988)(*citing* Johnson, Piracy in Modern International Law, 43 GROTIUS SOC'Y TRANSACTIONS 63, 65 (1957)).

[7] Prosecutor v. Anto Furundzija, Case No. IT-95-17, judgment of 10 Dec. 1998, p. 317 (1999); R. v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ungarte, No. 3, 2 All E.R. 97, 108-109, 114-115 (1999); Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. 226, at 257 (July 8)[hereinafter Legality of Nuclear Weapons]; Reservation to the Convention on the Prevention and Punishment of Genocide, 1951 I.C.J. 15 (May 28); *see* Gordon Christenson, *The World Court and Jus Cogens*, 81 AM. J. INT'L L. 93 (1987); M. Cherif Bassiouni, *A Functional Approach to General Principles of International Law*, 11 MICH. J. INT'L L. 768, 801-09 (1990); Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

[8] Barcelona Traction, Light and Power Co. Ltd. (Belg. v. Spain), 1970 I.C.J. 3, 32 (Feb5).[hereinafter Barcelona Traction]; M. Cherif Bassiouni, *Accountability for International Crime and Serious Violations of Fundamental Human Rights; International Crimes: Jus Cogens*

1. Thomas Good's acts of violence fall within the definition of piracy.

Under international law, the offense of piracy requires an (1) illegal act of violence or detention, (2) committed for private ends, (3) by the crew or passengers of a ship, (4) against another ship or against persons or property on board the other ship, (5) on the high sea or in an exclusive economic zone ("EEZ") as enshrined in several instruments.[9] Thomas Good's acts of plunder fall within this definition of piracy. Thomas Good not only robbed the ship but also illegally detained the crew. His illegal acts were for personal gain. Thomas Good boarded *The Mairi Maru* on the High Seas, commandeered it, and steered the ship out of the specially designated sea lanes.[10] Thereafter, *The Mairi Maru* drifted into the High Seas and ran aground on the Norton Shallows ("Shallows").[11] As with almost all acts of piracy in or near the Straits of Malacca and Singapore, the elements of Good's acts took place in the High Seas, archipelagic waters and international straits.[12] Under general principles of international law, if an element of the offense or the result occurred in one state, the offense is considered to have been committed

---

and Obligation Erga Omnes, 59 LAW & CONTEMP. PROB. 63, 66 (1996); Convention on the prevention and Punishment of Genocide, Jan. 12, 1951, art. 8 78 U.N.T.S. 277; 1949 Geneva Convention Relative to the Prisoners of War, Aug. 12, 1948, art. 129, 675 U.N.T.S. 135; 1949 Geneva Convention Relative to the Protection of Civilians at Times of War, Aug. 12, 1948, art. 14, 75 U.N.T.S. 287; Slavery Convention, March 9, 1927, art. 2, 212 U.N.T.S. 17; S.C. Res. 1373, U.N. SCOR (4385th mtg.), U.N. Doc. S/RES/1373 (2001)

[9] 1958 Convention, art. 14; UNCLOS, art. 100; Convention on the Suppression of Unlawful Acts , art. 13; *see generally* Robert Beckman, *Combating Piracy and Armed Robbery against Ships in Southeast Asia: the Way Forward*, 33 OCEAN DEV. AND INT'L L. 317 (2002).

[10] Compromis, ¶ 16; Clarifications, ¶ 3

[11] Compromis, ¶ 19; Corrections, ¶ 4.

[12] *Id.*

in that state.[13] Good boarded *The Mairi Maru* on the High Seas. Also, the ship ran aground on the High Seas, thus under international law his crime was committed on the High Seas. Lastly, Thomas Good disembarked onto another ship at the rendezvous location fulfilling the two ship requirement.[14] Therefore, Thomas Good's acts satisfies the elements of the crime and are indeed piracy.

2. Raglan failed to fulfill its obligations under international law because it failed to suppress piracy in its archipelagic waters and failed to properly respond to the attack on *The Mairi Maru*.

Raglan failed to take measures to prevent and suppress piracy in violation of its duty under international law. Several bands of pirates began preying on Raglan's archipelagic straits in 1995. The International Maritime Bureau ("IMB") reported forty distinct pirate attacks against ships in Raglan's archipelago in 1997 alone. For years Raglan failed to discharge its duty to the international community. Only after Raglan suffered a financial loss as a result of the decreased shipping did it take steps to address its piracy problem.

Even after Raglan implemented the anti-piracy program, it failed to discharge its duty because it neglected to take every measure to suppress piracy. The Raglanian Navy failed to electronically monitor the progress of *The Mairi Maru*, which is required under its program. Good failed to maintain constant contact with appropriately armed navy vessels as the sabotaged *Mairi Maru* drifted aimlessly for two days. Raglan negligently operated the anti-piracy program,

---

[13] MODEL PENAL CODE §1.03(1)(a) (1962); GEORGE A. BERMAN & VIVIAN GROSSWALD CURRAN, FRENCH LAW: CONSTITUTION AND SELECTIVE LEGISLATION, Code of Criminal Procedure, art. 693 (1998); Mi Zhou & Shizhou Wang, *China, at* 59, *in* INT'L ENCYCLOPEDIA OF LAWS, vol. 2 (Dupont & Fijnaut eds., 1993); D.D.N. Nsereko, *Uganda, at* 280-1, *in* INT'L ENCYCLOPEDIA OF LAWS, vol. 4 (Dupont & Fijnaut eds., 1993); HR 6 April 1915, NJ 1915 (Netherlands) p. 427, *cited in* J.A.W. Lensing, *The Netherlands*, at 51, *in* 3 INT'L ENCYCLOPEDIA OF LAWS, (Dupont & Fijnaut eds., 1993).

[14] Compromis, ¶ 7; Clarifications ¶ 3.

providing opportunities to pirates such as Good. In fact, Raglan hired Good, the perpetrator of the crimes.[15]

B. Raglan is responsible for the attack on and wreck of *The Mairi Maru* because Raglan failed to respond appropriately to the pirate attacks in violation of its obligations under international law.

The fundamental rule upon which the international responsibility of a state rests is set out in article 1 of the Draft Articles on State Responsibility: "every internationally wrongful act of a State entails the international responsibility of that state."[16] In order to establish state responsibility the conduct consisting of an act or omission must be attributable to the state, and must constitute a breach of an international obligation.[17]

Raglan is responsible for the attack on *The Mairi Maru* because it failed to respond appropriately to the piratic activities in its surrounding archipelagic waters. This failure falls squarely within the parameters of conduct invoking state responsibility. Not only is a state

---

[15] Compromis, ¶ ¶ 6, 8, 11, 13, 16-19, 29.

[16] Draft Articles on Responsibility of States for Internationally Wrongful Acts, arts. 1, 31, 42 (b)(i), International Law Commission, U.N. GA 56th Sess., Supp. No. 10 (2001) [hereinafter Draft Articles on State Responsibility]; *see generally* Phosphates in Morocco, Prelim. Objections, 1938 P.C.I.J, Series A/B N. 74, at 10 (June 6); Reparation for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174, at 184 (Apr. 11)[hereinafter Reparation for Injuries Case]; Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second Phase, 1951 I.C.J. 221 (July 18).

[17] Draft Articles on State Responsibility, art. 2; Military and Paramilitary Activities in and Against Nicaragua (Nic. v. U.S.), Merits, 1986 I.C.J. 4, at 23 (July 27) [hereinafter Nicaragua]; Gabcikovo-Nagymaros Project (Hung. v. Slov.), 1997 I.C.J. 7, at 47 (Sept. 25) [hereinafter Gabcikovo]; Velásquez Rodriguez, Inter-American Court of Human Rights (ser. C), No. 4 (1989), para. 170; Affaire Relative a l'acquisition de la Nationalite Polonaise, I R.I.A.A. 425 (1924); The International Fisheries Company Case, IV R.I.A.A. 691, 701 (1931); Dickson Car Wheel Company Case, The Mexico United States General Claims Commission, IV R.I.A.A. 669, 678 (1931); The Rainbow Warrior Case (N.Z. v. Fr.) XX R.I.A.A. 217 (1990) [hereinafter Rainbow Warrior].

responsible for acts committed, it is also responsible if the state failed to take the necessary steps to prevent an unlawful act. [18] Cases in which state responsibility has been invoked for omissions are at least as numerous as those based on positive acts.[19] Raglan's failure to suppress piracy, which has plagued its surrounding archipelagic waters for years, combined with its failure to respond appropriately to the attack on *The Mairi Maru* constitute such omissions.[20]

C. Raglan is responsible for the attack upon and wreck of *The Mairi Maru* because Thomas Good's acts are attributable to Raglan.

1. Thomas Good was an agent of the Raglanian government.

Even if this Court finds that Raglan discharged its duty to prevent and suppress piracy, Raglan is still responsible for the attack on *The Mairi Maru* because Good was an agent of the state, thus his acts are attributable to Raglan. In the *German Settlers* advisory opinion, the Permanent Court of International Justice explained that the state depends upon individuals charged to act on its behalf for "states can only act by and through their agents and representatives."[21] When a state vests an individual with authority, the individual's acts become the acts of the state itself. [22] Because the Raglanian municipal law designating Thomas Good as

---

[18] Corfu Channel Case, (U.K. v. Alb.), Merits, 1949 I.C.J. 4, 52 (Apr. 9)(dissenting opinion of Judge Winiarski)[hereinafter Corfu Channel].

[19] *Id.* at 45.

[20] Compromis, ¶¶ 6-7.

[21] Questions Relating to Settlers of German Origin in Poland (Ger. V. Pol.), 1923 P.C.I.J. (ser. B) No. 6, at 22 (June 28)[hereinafter German Settlers].

[22] Draft Articles on State Responsibility, arts. 4-5; CLYDE EAGLETON, THE RESPONSIBILITY OF STATES IN INTERNATIONAL LAW 22, 44-5 n.4 (1928); IAN BROWNLIE, 1 SYSTEM OF THE LAW OF NATIONS; STATE RESPONSIBILITY 132 (1983); D.D. Caron, *The Basis of Responsibiliy: Attribution and Other trans-Substantive Rules, in* THE IRAN-UNITED STATES CLAIMS TRIBUNAL: ITS CONTRIBUTION TO THE LAW OF STATE RESPONSIBILITY 109 (R. LILICH & D. MAGRAW eds., 1998).

a private contractor for the Navy is unclear, international law may independently determine the status of an individual as a state actor.[23]

State practice shows that a private individual hired by the state to operate on the government's behalf, and under the supervision of a governmental agency will be deemed a state agent.[24] In the *Zafiro* case, the United States was required to pay compensation for looting and damage caused by a civilian crew.[25] The civilian crew in *Zafiro* was under the command of the U.S. Navy, and although the crew was on shore leave at the time of their imputable actions, the tribunal held the United States liable.[26]

Thomas Good, like the crew in *Zafiro*, is an agent of Raglan because he was selected, trained and hired by the Raglanian government and operated under its control.[27] Further, the Raglanian judiciary dismissed an action for compensation for destruction of *The Mairi Maru,* relying upon the judicial immunity traditionally enjoyed by the Raglanian armed forces.[28] Raglan cannot escape liability by designating Good as an "independent contractor" when, in fact, he exercised police power, one of the most fundamental elements of government authority.[29]

---

[23] Roberto Ago, *Third Report of the Special Rapporteur on State Responsibility*, [1970] 2 Y.B. Int'l L. Comm'n 193, 234, U.N. Doc. A/CN.4/233.

[24] Earnshaw and Other: The Zafiro Case, (U.K. v. U.S.), VI R.I.A.A. 160 (1925), *reprinted in* 20 AM. J. INT'L. L. 385 (1926)[hereinafter the Zafiro Case]; The Stephen Case (U.S. v. Mex.), IV R.I.A.A. 265 (1927).

[25] The Zafiro Case, *supra* note 24, at 167.

[26] *Id.*

[27] Compromis, ¶15.

[28] Compromis, ¶30.

[29] Draft Articles on State Responsibility, art. 5.

2. Thomas Good's actions are attributable to Raglan even if they are *ultra vires* or contravene Raglan's instructions.

Under international law, the conduct of a person empowered to exercise governmental authority shall be considered an act of the state if the empowered person acts in that capacity, even if the person contravenes instructions.[30] As articulated by the Iran-U.S. Claims Tribunal, if the act was carried out by persons cloaked with governmental authority, albeit unlawfully, the act is attributable to the state.[31] This rule was applied in the *Caire* case, in which two Mexican officers tried to extort money from a French national and consequently murdered him. The Tribunal held:

> [E]ven if they are deemed to have acted outside their competence . . . and even if their superiors countermanded an order, they have involved the responsibility of the state, since they acted under the cover of their status as officers and used means placed at their disposal on accounts of that status.[32]

Thomas Good boarded the ship under the authority of the Raglanian Navy and in the process abused the means placed at his disposal by the state. Even though his actions were *ultra vires*, they are attributable to Raglan because he was acting under the color of naval authority.[33]

---

[30] Draft Articles on State Responsibility, art. 7; *Conference for the Codification of International Law*, League of Nations Preparatory Comm. Doc.C.75.M.69 III, at 74 (1929), *in* 3 Y.B. Int'l Comm'n 70; F.V. Garcia Amador, *Sixth Report of the Special Rapporteur on State Responsibility* [1961] 2 Y.B. Int'l Comm'n, at 53, U.N. Doc. A/CN.4/134; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Dec. 7, 1978, art. 91, 1125 U.N.T.S. 3; The Caire Case, V R.I.A.A. 516, 531 (1929).

[31] Petrolane Inc. v. Islamic Republic of Iran, 27 Iran-U.S. Cl. Trib. Rep. 64, 92 (1991).

[32] The Caire Case, *supra* note 30, at 531.

II. RAGLAN IS RESPONSIBLE FOR THE LOSS OF *THE MAIRI MARU*, THE MOX AND OTHER CARGO THAT SHE CARRIED BECAUSE RAGLAN ILLEGALLY SCUTTLED THE VESSEL

A. Raglan has violated international law by scuttling *The Mairi Maru* and is liable for damages.

Under international law, Appollonia may bring claims for reparations for injuries suffered by its citizens.[34] The owners of *The Mairi Maru* are Appollonian citizens who suffered extensive financial loss. *The Mairi Maru* was one of the largest double-hulled ocean-going cargo ships in Appollonia with an estimated value of 15 million euros.[35]

Where one state imposes injury on another, international law dictates that "reparation must, as far as possible, wipe out all the consequences of the illegal act."[36] Raglan has unlawfully destroyed *The Mairi Maru*, a serious violation of basic norms of international law. More specifically, Raglan has violated Appollonia's territorial sovereignty.[37] Private ships sailing the High Seas are subject to the exclusive jurisdiction of the state whose flag they fly and are an extension of the territory of that state.[38] This principle, the exclusivity rule of flag state

---

[34] Reparation for Injuries Case, *supra* note 16, at 178; The M/V "SAIGA" Case (St. Vincent v. Guinea), Merits, International Tribunal for the Law of the Sea [hereinafter ITLOS], Case No. 2, (July 1, 1999), at 21 [hereinafter SAIGA Case].

[35] Compromis, ¶¶ 30, 14.

[36] Case Concerning the Factory of Chorzow (Pol. v. Ger.), Indemnity, 1917 P.C.I.J. (ser. A) No. 17, at 47 (May 25).

[37] Rainbow Warrior Case, *supra* note 17, at 259.

[38] UNCLOS, art. 92(1); United States v. Flores, 289 U.S. 137 (1933); Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306, 313 n.1 (1970); Martin Davies, *Australia's Tampa Incident: The Convergence of International and Domestic Refugee and Maritime Law in the Pacific Rim*, 12 PAC. RIM L. & POL'Y J. 109, 117 (2003).

jurisdiction, is a pillar of international law.[39] *The Mairi Maru* ran aground outside the territorial waters and EEZ of Raglan and was subject to the exclusive authority of Appollonia.[40] Raglan deliberately and illegally destroyed the Apollonian flagged *Mairi Maru* and scuttled it 9000 meters to the bottom of the Deep Sand.[41]

B. Raglan's illegal destruction of property may not be precluded by the doctrine of necessity.

Raglan may not invoke the doctrine of necessity to preclude the wrongfulness of the destruction of *The Mairi Maru* for two reasons. First, Raglan has contributed to the occurrence of the state of necessity. Second, scuttling the vessel was not the only means for Raglan to protect its essential interests against the peril of nuclear pollution. The doctrine of necessity "is absolutely of an exceptional nature"[42] and states must meet stringent conditions before any plea is allowed. Under customary international law, states may not invoke necessity as grounds to preclude the wrongfulness of an act unless the act was the only means of safeguarding its essential interests against a grave and imminent peril.[43] Further, the state which committed the

---

[39] 1958 Convention, art. 6(1); D.P. O'CONNELL , 2 INTERNATIONAL LAW 645 (2d ed., 1970); BROWNLIE, PRINCIPLES, *supra* note 3, at 238-242; R.R. CHURCHILL & A.V. LOWE, THE LAW OF THE SEA 215 (3d ed., 1999); Robert Reuland, *Interference with Non-national Ships on the High Seas: Peacetime Exceptions to the Exclusivity Rule of Flag-State Jurisdiction*, 22 VAND. J. OF TRANSNAT'L L. 1161, 1162 (1989).

[40] Corrections, ¶ 4.

[41] Compromis, ¶ 24.

[42] Roberto Ago, *Addendum to the Eighth Report on State Responsibility*, [1980] 2 Y.B. Int'l L. Comm'n , at para 77, U.N. Doc. A/CN.4/318/ADD.5-7; *see also* Geoffrey Marston, *Armed Intervention in the 1956 Suez Canal Crisis: The Legal Advice Tendered to the British Government*, 37 INT'L & COMP. L.Q. 773, 785 (1988).

[43] Draft Articles on State Responsibility, art. 25; Gabcikovo, *supra* note 17, at ¶ 52; *See also* BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 60-77 (1953); Andreas Laursen, *The Use of Force and the State of Necessity*, 37 VAND. J. OF

act must not have "contributed to the occurrence of the state of necessity."[44]

Thomas Good's piratical acts caused the crash of *The Mairi Maru* and consequently the MOX leakage. Under customary international law Raglan had an obligation to notify Appollonia before taking any adverse actions.[45] Second, the Raglanian Navy secured and encased the MOX canisters, preventing any further leakage and therefore could have salvaged the MOX and *The Mairi Maru*.[46] As a last resort, Raglan could have sunk the encased MOX rather than the entire ship. This significantly departs from cases of necessity recognized under international law. In the *Torrey Canyon* incident, the British government decided to bomb the ship causing an oil spill only after all other remedial attempts had failed.[47]

III. RAGLAN DOES NOT HAVE STANDING TO SEEK COMPENSATION FOR ECONOMIC LOSSES RESULTING FROM ACTS THAT OCCURRED WHOLLY OUTSIDE ITS TERRITORIAL WATERS AND EEZ

No state may bring a claim before this Court without standing—that is, without demonstrating a cognizable legal interest in the subject matter of the dispute.[48] Raglan's general

---

TRANSNAT'L L. 485 (2004); Roman Boed, *State of Necessity as a Justification for International Wrongful Conduct*, 3 YALE HUM. RTS. & DEV. L.J. 1, 4-12 (2000).

[44] Draft Articles on State Responsibility, art. 25(2)(b); Gabcikovo, *supra* note 17, at 46; Andrew Schaefer, *1995 Canada-Spain Fishing Dispute (the Turbot War)*, 8 GEO. INT'L ENVTL. L. REV. 437, 447 (1996); Peter G. Davies, *The EC/Canadian Fisheries Dispute in the Northwest Atlantic*, 44 INT'L & COMP. L.Q. 917, 937 (1995); *see also* The SAIGA Case, *supra* note 34.

[45] International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Nov. 29, 1969, 970 U.N.T.S 212 [hereinafter Intervention on the High Seas Convention]

[46] Clarifications, ¶ 2.

[47] The *Torrey Canyon*, Cmnd. 3246 (London, Her Majesty's Stationary Office, 1967); *see also* Intervention on the High Seas Convention.

[48]Case Concerning the Northern Cameroons (Cameroons v. U.K.), 1963 I.C.J. 33, at 15, 33-4, 44, 46 (Dec. 2); South West Africa Cases (Eth. v. S. Afr.; Liber. v. S. Afr.), 1966 I.C.J. 7, 31

interest in the preservation of the Shallows is not a legally cognizable interest which provides standing for its claim. Raglan's claim is non-justiciable under any theory of injury, including damage to property, economic loss and damage to the marine environment.

A. Raglan does not have a direct territorial legal interest in the Shallows and is therefore without standing.

The Mairu Maru ran aground in the Shallows, a series of uninhabited sandbars unclaimed by any nation.[49] Under international law, the Shallows are *terra nullius*, meaning that no state has territorial rights over the area.[50] Similarly, because the Shallows are located more than 250 nautical miles from Raglan's archipelagic baseline,[51] the waters in the area are considered High Seas or *res communis*.[52] For states to claim territorial ownership over an area, international law requires the state show an actual, intentional, continuous and peaceful display of state function over the territory.[53] Although some Raglanian citizens have engaged in eco-tourism in the Shallows, Raglan has taken no official state actions in relation to the Shallows, and it remains an

---

(July 18)[hereinafter South West Africa]; Barcelona Traction, *supra* note 8, at 37; MALCOLM SHAW, INTERNATIONAL LAW 984 (5th ed., 2003); BROWNLIE, PRINCIPLES , *supra* note 3, at 434; Attila Tanzi, *Is Damage a Distinct Condition for the Existence of an Internationally Wrongful Act? in* UNITED NATIONS CODIFICATIONS OF STATE RESPONSIBILITY 13 (M. SPINEDI & B. SIMMA eds., 1987); Reparation for Injuries Case, *supra* note 16, at 181-82; The Western Sahara Case, 1975 I.C.J. 12 (Oct. 16).

[49] Compromis, ¶¶ 2,19.

[50] SHAW, *supra* note 48, at 413.

[51] Corrections, ¶ 4.

[52] SHAW, *supra* note 48, at 413.

[53] Island of Palmas Case (Neth. v. U.S.), II R.I.A.A. 829 (1928); The Eritrea/Yemen Arbitration, 114 I.L.R. 1, at 69.

unclaimed area.[54] Further, no damage has occurred within Raglan's territorial land, waters, or EEZ.[55] Raglan thus fails to establish the legal right or interest required for it to bring a claim based on the damage to the Shallows.

B. Raglan's potential loss of tax revenue is not sufficient to provide a cognizable legal interest.

Raglan may assert the loss in potential tax revenue due to decreased eco-tourism in the Shallows as a legal interest. However, international law requires nations to base their claims on a "personal and direct interest," [56] and Raglan's interest is too remote to meet this threshold requirement. Providing Raglan with standing based on potential lost tax revenue derived from citizens' activities outside its territory would lead to absurd results. Many countries derive tax revenue from citizens and corporations abroad. Permitting states to bring claims based on this type of loss would flood the international legal system with cases that it is ill-equipped to handle.

C. Raglan cannot assert a claim on behalf of the international community based on environmental damage.

A claim based on the theory that international law recognizes an *erga omnes* obligation to prevent transboundary environmental damage is not sustainable. Although this Court has recognized that certain obligations exist which are owed to the international community, their scope is limited to crimes of aggression, genocide, slavery, piracy and issues of human rights.[57]

---

[54] Compromis, ¶ 2.

[55] *Id.*

[56] Barcelona Traction, *supra* note 8, at 32.

[57] Barcelona Traction, *supra* note 8, at 32; Nicaragua , *supra* note 17, at 100; East Timor (Port. v. Austl.), 1995 I.C.J. 90, 172, 204 (June 30) (dissenting opinion of Judge Wereramantry); Draft Articles on State Responsibility, Commentary, at 242-44.

Prevention of environmental damage falls outside the limited scope of *erga omnes* obligations.[58]

Additionally, to enforce *erga omnes* obligations, a state must possess a right of its own, distinct from a general community interest.[59] The cognizable legal interests of states in extraterritorial areas such as the High Seas are limited to rights associated with a state's flag-ships, nationals and property.[60] Raglan's attempt to take unilateral action to enforce the international community's interest in preservation of the High Seas amounts to a claim raised *actio popularis.*[61]

As this Court opined in the *South West Africa* cases, the principle of *actio popularis* is not recognized under international law, nor is the Court able to consider it imported as a "general principle of law" under article 38(1)(c) of the Statute.[62] This position appropriately reflects the consensual nature of international law.[63] *Actio popularis* would enable a state to act on behalf of other states without their consent and would also create legal relationships where none were intended. Specifically, international law does not recognize *actio popularis* where there has been harm to the common environment.[64] To the extent that international law recognizes

---

[58] Prosper Weil, *Towards a Relative Normativity in International Law?,* 77 AM. J. INT.'L L. 413, 430-32 (1983).

[59] South West Africa, *supra* note 48, at 47; BRIAN SMITH, STATE RESPONSIBILITY AND THE MARINE ENVIRONMENT, 95 (1988); ANTONIO CASSESE, INTERNATIONAL LAW IN A DIVIDED WORLD 27-28 (1986).

[60] SMITH, *supra* note 59, at 87.

[61] South West Africa, *supra* note 48, at 47.

[62] *Id.*

[63] *See* Barcelona Traction, *supra* note 8, at 33.

[64] SMITH, *supra* note 59, at 249; CHRISTINE GRAY, JUDICIAL REMEDIES IN INTERNATIONAL LAW 214-215 (1988); Roberto Ago, *Fifth Report of the Special Rapporteur on State Responsibility*

environmental obligations *erga omnes*, only international organizations vested with the authority, and not an *actio popularis*, can assist in resolving disputes.[65]

D. Neither the principles embodied in the 1982 Convention, the Basel Convention, nor the Stockholm Convention confer standing upon Raglan.

Under international law, standing may be based on international treaties. The marine environment and transboundary environmental damage is addressed in the 1982 United Nations Law of the Sea Convention ("1982 Convention"), the Basel Convention and the Stockholm Convention.[66] Raglan's reliance upon these treaties is misguided, however, because Appollonia is not a party to any of these instruments.[67] International law, as recognized in the Vienna Convention on the Law of Treaties and in several decisions of this Court, does not allow states to impose treaty obligations on states not party to those treaties.[68] Furthermore, international law requires that limitations on the sovereignty of a state must be proven, not presumed.[69]

[1976] 2 Y.B. Int'l .L. Cmm'n. at 28-54, U.N. Doc. A/CN.4/291; Philippe Sands, *Environment, Community, and the Law*, 30 HARV. INT'L L. J. 393, 397 (1989).

[65] SMITH, *supra* note 59, at 249; GRAY, *supra* note 64, at 214-15; UNCLOS, arts 139 ,187; Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies, Oct. 10, 1967, art. 1, 610 U.N.T.S. 205.

[66] UNCLOS; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Mar. 22, 1989, 1673 U.N.T.S. 57; Stockholm Declaration on the Human Environment of the United Nations Conference on the Human Environment, 11 I.L.M. 1416 (1972)[hereinafter Stockholm Declaration].

[67] Compromis, ¶ 35.

[68] Vienna Convention, art. 35; North Sea Continental Shelf Cases (F.R.G. v. Den.; F.R.G. v. Nor.) 1969 I.C.J. 4 (Feb. 20); Island of Palmas Case, *supra* note 60, at 829.

[69] Case of the S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser./A) No. 10 (Sept. 7)[hereinafter Lotus]; *See also,* Preliminary Report on International Liability for Injurious Consequences Arising Out of Acts not Prohibited by International Law, [1980] 2 Y.B. Int'l. Comm'n. 247, 257, U.N. Doc. A/CN.4/334/Add.1-2 (pt. 1).

Lastly, there are no principles of customary international law which would provide Raglan with standing. The principles codified in the 1982 Convention, the Basel Convention and the Stockholm Convention have not risen to the level of customary international law.[70] In order for a customary norm to exist, practice must be "both extensive and virtually uniform and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved."[71] However the provisions of the 1982 Convention on the duty to protect the marine environment[72] do not rise to the level of custom. These are new provisions not found in the 1958 Convention. Moreover, sixty-four countries, approximately one-third of the world's nations, are not party to the 1982 Convention, including the United States and Canada.

IV. APPOLLONIA DID NOT VIOLATE ANY OBLIGATIONS OWED TO RAGLAN UNDER INTERNATIONAL LAW IN TRANSPORTING MOX THROUGH THE WATERS OF THE RAGLANIAN ARCHIPELAGO

A. Appollonia was under no obligation to provide Raglan with prior notification or obtain Raglan's consent before shipping MOX through its archipelago.

Raglan seeks to punish Appollonia for exercising a right long recognized under international law. For centuries, nations have enjoyed freedom of navigation, and commerce throughout the world's oceans and seas. Today, this freedom is recognized as a fundamental principle of customary international law.[73] As a coastal nation, Appollonia's economy benefits

---

[70] Ian Brownlie, *A Survey of International Customary Rules of Environmental Protection*, 13 NAT. RESOURCES J. 179 (1973).

[71] North Sea Continental Shelf, *supra* note 68, at 44.

[72] UNCLOS, arts. 216- 20.

[73] BROWNLIE, PRINCIPLES , *supra* note 3, at 191; Arvid Pardo, *Perspectives on Ocean Governance*, *in* FREEDOM FOR THE SEAS IN THE 21ST CENTURY: OCEAN GOVERNANCE AND ENVIRONMENTAL HARMONY 39 (Jon M. Van Dyke et. al. eds., 1993); HUGO GROTIUS, THE FREE SEA xi-xx (Knud Haakonsen ed., Liberty Fund 2004) (1609).

greatly from its freedom to export nuclear material via the oceans and seas.[74] No basis exists under international law for Raglan to impinge upon Appollonia's longstanding right to free use of the seas.

1. The 1958 Convention on the High Seas confers upon Appollonia freedom of movement through Raglan's archipelagic waters.

For nearly fifty years, Appollonia has operated under the universally accepted legal regime established by the 1958 Geneva Convention on the High Seas. The 1958 Convention codified international law regarding the High Seas and guaranteed parties the freedom of navigation through the high seas regardless of the characteristics of its cargo.[75] Article 2 states that the freedom of navigation, "recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas."[76] Further, navigation through the High Seas does not require prior notice or consent of any other states as no state can claim sovereignty over the High Seas.[77] Moreover, under the 1958 Convention Raglan's archipelagic waters are treated as High Seas and the only duty imposed upon Appollonia is one of reasonableness under article 2 of that Convention.[78] Appollonia's actions met the reasonableness requirements by complying with

---

[74] Compromis, ¶ 3; THOMAS A. CLINGAN, JR., THE LAW OF THE SEA: OCEAN LAW AND POLICY 10-11 (1994).

[75] 1958 Convention , pmbl., art. 2; Louis B. Sohn, *Generally Accepted International Rules*, 61 WASH. L. REV. 1073, 1075-76 (1986); *see generally* GROTIUS, THE FREE SEA, *supra* note 73; GROTIUS, ON THE FREEDOM OF THE SEAS (Ralph Van Deman Magoffin trans., Oxford University Press 1916) (1609); Compromis, ¶ 35.

[76] 1958 Convention, art. 2.

[77] Pardo, *supra* note 73, at 39.

[78] 1958 Convention, art. 2; Peter A. Bernhardt, *The Right of Archipelagic Sea Lanes Passage: A Primer*, 35 VA. J. INT'L L. 719, 720 (1995).

maritime safety standards, including the use of a captain with experience in transporting nuclear materials, a carefully planned route and a double-hulled ship.[79]

2. The archipelagic waters regime in the 1982 Convention is not customary international law and does not limit Appollonia's freedom of navigation.

Special regulatory rights regarding archipelagic waters were established in the 1982 Convention, upon which Raglan's claim is predicated, have no application in this case.[80] Appollonia is not a party to the 1982 Convention. Moreover, the regime is novel: prior to the 1982 Convention "the concept of archipelagic waters was unknown to international law."[81] Part IV of the 1982 Convention gives archipelagic states the right to draw baselines around their outer islands, enclosing large expanses of the sea and thereby shrinking the size of the High Seas. Raglan's reliance on the archipelagic regime is misplaced. Unlike the 1958 Convention, whose preamble states that its provisions "codify the rules of international law relating to the high seas," a theme in the statements made by the delegates at the conference for the 1982 Convention at Montego Bay maintained that the Convention provisions did not represent customary international law.[82] In fact, the President of the Third United Nations Conference on the Law of the Sea recognized the 1982 Convention's departure from custom, noting, "[t]he argument that,

---

[79] Compromis, ¶ 14, Clarifications ¶ 11.

[80] SHAW, *supra* note 48, at 502; Donald R. Rothwell, *Navigational Rights and Freedoms in the Asia Pacific Following Entry Into Force of the Law of the Sea Convention*, 35 VA. J. INT'L L. 587, 587, 597 (1995); Satya Nandan, *An Introduction to the 1982 United Nations Convention on the Law of the Sea, in* ORDER FOR THE OCEANS AT THE TURN OF THE CENTURY (D. VIDAS & W. OSTRENG eds., 1999).

[81] E.D. BROWN, INTERNATIONAL LAW OF THE SEA: INTRODUCTION MANUAL 122 (1994).

[82] 1958 Convention, pmbl.; Tommy Koh, *A Constitution for the Oceans*, Remarks Before the Third United Nations Conference on the Law of the Sea, *in* THE LAW OF THE SEA: OFFICIAL TEXT OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA WITH ANNEXES AND INDEX xxxiv (1983).

except for Part XI, the Convention codifies customary law or reflects existing international practice is factually incorrect and legally insupportable."[83]

3. Should this Court find that the 1982 Convention a codification of customary international law, Appollonia met all its obligations, and was under no duty to notify or obtain consent from Raglan regarding its MOX shipments.

The 1982 Convention's archipelagic sea lane regime continues to favor freedom of navigation through archipelagic waters. The archipelagic sea lane regime proscribed in articles 53 and 54 of the 1982 Convention grants archipelagic states the right to designate sea lanes. This regime is a "compromise between the regime of innocent passage advocated by Indonesia and other archipelagic states, on the one hand, and the regime of freedom of navigation advocated by the maritime powers on the other hand."[84]

In the Draft Articles on Archipelagos, Fiji, Indonesia, Mauritius and the Philippines' proposal of article 53(1), advocated that the sea lanes be "suitable for the safe and expeditious passage of ships," but the provision adopted requires they be "suitable for the continuous and expeditious passage of foreign ships and aircraft."[85] This language highlights the drafters' intention to narrow archipelagic states' power to inhibit or limit passage through designated sea lanes; it expressly rejects application of the innocent passage regime to the archipelagic straits.[86]

Because Raglan exercised its optional right under the 1982 Convention to designate sea

---

[83] Koh, *supra* note 82.

[84] Bernhardt, *supra* note 78, at 726-27.

[85] Fiji, Indonesia, Mauritius and the Philippines: Draft Article on Archipelagos, U.N. Doc. No. A/AC.138/SC.II/L.48 (1973), *reprinted in* 3 Report on the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction, U.N. GAOR, 28th Sess., Supp. No. 21 at 102, U.N. Doc. A/9021 (1973); UNCLOS, art. 53.

[86] Bernhardt, *supra* note 78, at 734-35.

lanes,[87] its regulatory power over ships traveling the lanes is limited. Though ships are not required to use the designated sea lanes, if vessels use them, they "will enjoy the benefit of the archipelagic sea lanes passage."[88] *The Mairi Maru*'s route was prepared and executed on the basis of using Raglan's sea lanes and it was not until after Good pirated the ship that *The Mairi Maru* was steered out of the designated sea lanes.[89]

As demonstrated by article 54 of the 1982 Convention, the sea lane regime does not permit Raglan to require prior notice and consent. Article 54, referencing article 44, provides that an archipelagic state may not hamper or suspend archipelagic sea lane passage.[90] This demonstrates that it is unnecessary for Appollonia to obtain prior consent and/or notice for passage through Raglan's sea lanes. Any notice or consent requirement asserted by Raglan is without basis under the 1982 Convention's newly established archipelagic sea lane regime.

Although article 53(6) provides that "[a]n archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes," these traffic separation schemes are unrelated to prior notice and consent.[91] Raglan's authority to impose traffic separation schemes is limited to cases in which there exists "(a) close proximity of opposing islands through which a sea lane passes, (b) adverse tidal conditions which make the passage in otherwise wide channels in effect

---

[87] BROWN, *supra* note 81, at 122; Clarifications, ¶ 10.

[88] BROWN, *supra* note 81, at 121.

[89] Compromis, ¶ 3.

[90] UNCLOS, arts. 44, 54; Nugroho Wisnumurti, *Archipelagic Waters and Archipelagic Sea Lanes*, *in* INTERNATIONAL NAVIGATION: ROCKS AND SHOALS AHEAD? 204 (Van Dyke et al. eds., 1988).

[91] UNCLOS, art. 53(6).

narrow, or (c) other hydrographic characteristics such as shallow water or waters containing wrecks or rocks."[92] The facts provide no indication that Raglan's sea lanes possess any condition which would allow implementation of traffic schemes.[93]

Finally, the 1982 Convention allows states to adopt laws and regulations relating to archipelagic sea lanes passage, provided they are in compliance with generally accepted international norms and obligations.[94] No indication exists that Raglan has instituted any international declarations or domestic legislation which require notice or consent.[95]

4. Prior notice and consent have not risen to the level of customary international law.

The proposition that prior notice and consent are obligatory under customary international law does not enjoy widespread support. Customary international law is formed when states follow certain practices generally and consistently out of a sense of obligation, or *opinio juris*.[96] Neither element is present in the case before this Court.

The 1992 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal[97] requires state parties to provide prior written consent for

---

[92] Bernhardt, *supra* note 78, at 747.

[93] *See generally* Compromis.

[94] UNCLOS, art. 54; *see* Declaration to UNCLOS, Oman (17 August 1989), *in* K.R.SIMMONDS, NEW DIRECTIONS IN THE LAW OF THE SEA, Binder IV, U.5, 34; Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea (1993), Sec. 9, 24 Law of the Sea Bulletin 10 (December 1993); *see* Declaration to UNCLOS, Egypt (26 August 1983), *in* K.R. Simmonds, *supra* note 74, Binder IV, U.5, 29; Declaration to UNCLOS, Malaysia, *in* LEE & HAYASHI, NEW DIRECTIONS IN THE LAW OF THE SEA: REGIONAL AND NATIONAL DEVELOPMENTS, Binder 1, II.1.b(4).

[95] *See generally* Compromis.

[96] SHAW, *supra* note 48, at 68-72; Legality of Nuclear Weapons, *supra* note 7, at 253.

transboundary movement of nuclear materials. Although many states have ratified the Basel Convention, many dominant maritime states, including United Kingdom, Italy, Japan, Germany and Singapore, made reservations asserting that they were not bound by the obligation to notify or obtain consent from any other state for passage through territorial waters or EEZs when carrying hazardous waste cargo.[98] Notably, the United States, a significant maritime power, is not a party to the Basel Convention.[99] These circumstances illustrate the lack of wide-spread consensus regarding the requirements of prior notice or consent. Therefore, these principles are not norms of customary international law.

Ships carrying radioactive materials continue to sail around the world without providing notice to any state of the nature of their cargoes, exercising the generally accepted right of freedom of navigation.[100] For example, ships from Sweden, France, Japan, and the United States have transported thousands of shipments of spent fuel without incident for more than thirty years.[101] In November, 1992, *The Akatsuki Maru* carried 2,200 pounds of plutonium from

---

[97] Basel Convention, art 6; TRANSBOUNDARY MOVEMENTS AND DISPOSAL OF HAZARDOUS WASTES IN INTERNATIONAL LAW: BASIC DOCUMENTS 32 (B. KWIATKOWSKA & A.H.A. SOONS eds., 1993).

[98] *See generally* Basel Convention.

[99] Secretariat of the Basel Convention, United Nations Environment Programme, *Parties to the Basel Convention, available at* http://www.basel.int/ratif/frsetmain.php (last visited Jan. 15, 2005).

[100] New Shipment of Nuclear Fuel to Leave France for Japan, Aug. 9, 2000, LEXIS, Nexis Library, Agence France Presse; *see* The United Nations and Nuclear Non-Proliferation, The United Nations Blue Books Series, Vol. III, 187 *et seq.* (1995); Raul A. F. Pedrozo, *Transport of Nuclear Cargoes by Sea*, 28 J. MAR. L. & COM. 207, 210-11 (1997).

[101] Pedrozo, *supra* note 100, at 211; Maki Tanaka, *Lessons from the Protracted MOX Plant Dispute: A Proposed Protocol on Marine Environmental Impact Assessment to the United Nations Convention on the Law of the Sea*, 25 MICH. J. INT'L L. 337, 367-68 (2004); Yomiuri

France to Japan.[102] *The Akatsuki Maru* left France, traveled around the Cape of Good Hope, later passed between Australia and New Zealand, and then through the waters of several Pacific island nations finally arriving in Japan.[103] According to the Japanese government, the route was kept secret due to security concerns over the vessel, crew, and cargo.[104]

Finally, British Nuclear Fuels Ltd. (BNFL) has been transporting hazardous waste materials, including MOX, by sea via the Panama Canal, the Cape of Good Hope and Cape Horn for over 30 years.[105] Recently, BNFL found itself at the center of a dispute between Ireland and the United Kingdom submitted to the International Tribunal for the Law of the Sea. The tribunal did not reach the question whether the United Kingdom was required to provide notification and obtain consent prior to shipping nuclear materials through Ireland's waters, instead deciding to deny Ireland's application for provisional measures on procedural grounds.[106] BNFL has made no subsequent changes in its shipping procedures and nuclear material transits freely through the Irish Sea.[107]

Shimbun, *MOX Fuel Shipment arrives at Niigata N-Plant*, THE DAILY YOMIURI (Tokyo) Mar. 25, 2001, at 1.

[102] Jon M. Van Dyke, *The Legal Regime Governing Sea Transport of Ultrahazardous Radioactive Materials*, 33 OCEAN DEV. & INT'L L. 77, 78 (2002).

[103] Rothwell, *supra* note 80, at 614-15; Warren H. Donnelly & Zachary Davis, *Japan's Sea Shipment of Plutonium*, Congressional Research Service (January 15, 1993) *available at* http://www.fas.org/man/crs/93-1-15.htm (last visited Jan. 15, 2005).

[104] *See* Jon M. Van Dyke, *Sea Shipment of Japanese Plutonium under International Law*, 24 OCEAN DEV. & INT'L L. 399 (1993).

[105] Pedrozo, *supra* note 100, at 211; Tanaka, *supra* note 101, at 367-68.

[106] The MOX Plant Case (Ire. v. U. K.), ITLOS, Case No. 2, (Dec. 3, 2001 Order); Tanaka, *supra* note 101, at 338.

[107] Pedrozo, *supra* note 100, at 211; Tanaka, *supra* note 101, at 367-68.

Appollonia, like Japan needs to withhold notification and consent to transit states due to the security risks presented by the shipment of MOX. Informing Raglan of the MOX shipment would significantly increase the likelihood of harm, even possibly attracting many would-be Thomas Goods to apply for Raglan's anti-piracy program, applicants which Raglan has already demonstrated it cannot properly screen out.[108] Lastly, Appollonia submits that when states do provide prior notification, notice is not provided based on a sense of legal obligation, but to serve the security needs of the transiting state. However, what lessens the concerns of one state may add to the concerns of another. In the case before this Court, security required silence. Because no treaty, customary international law or municipal law provision prohibit Appollonia from shipping MOX through the Raglanian archipelago, Appollonia is in clear compliance with both international and municipal law. [109]

5. Raglan does not have any Third Party Rights to Consent or Notification Arising out of any Treaty or Regime to which it is not a Party.

It is a fundamental rule of treaty law that rights and obligations are only created between those states which are parties to the treaty. Unless clearly provided for in the treaty, no rights can be deduced in favor of third states. [110] The ICJ reinforced this point in the *North Sea Continental Shelf* cases when it stated that third parties "could not claim any rights under [a treaty] until the professed willingness and acceptance had been manifested in the prescribed

---

[108] Compromis, ¶16.

[109] Lotus, *supra* note 69, at ¶ 19.

[110] L. OPPENHEIM, 1 INTERNATIONAL LAW 925-26 (Lauterpacht, 8th ed. 1955); German Interests in Polish Upper Silesia, Merits, 1926 P.C.I.J. (ser. A,) No. 7, at 29 (May 2)

form[,]" i.e., ratification or accession to the instrument in question.[111]

Raglan claims that Appollonia "violated its duties as an exporter of nuclear materials."[112] Any such duties would arise out of Appollonia's status as a party to the Nuclear Non-Proliferation Treaty and member of the International Atomic Energy Agency ("IAEA"). Raglan is not a party to either regime and thus, cannot claim any rights thereunder. Moreover, any regulations promulgated by the IAEA relating to the transport of nuclear materials are either non-binding or not applicable to Appollonia. The Director General of the IAEA noted that "[t]he IAEA's safety standards are not legally binding on Member States but may be adopted by them, at their own discretion, for use in national regulations in respect of their own activities."[113] Furthermore, the Joint Convention on the Safety of Spent Fuel Management promulgated by the IAEA specifies that notification and consent may only be required by the "state of destination."[114] Accordingly, Raglan's claim for third party notice rights under the IAEA regime must be rejected.

B. Appollonia fulfilled all applicable international law obligations concerning protection of the marine environment and is not liable for any damage to the Norton Shallows.

1. Appollonia is not responsible for the actions of the captain and crew of *The Mairi Maru.*

The Mairi Maru, as a private flag vessel, is not a state agent under international law for

---

[111] North Sea Continental Shelf Cases, *supra* note 68, at 25-26.

[112] Compromis, ¶ 28.

[113] IAEA, *Regulations for the Safe Transport of Radioactive Material*, foreword (1996 ed. as amended 2003),

[114] IAEA, *Joint Convention on the Safety of Spent Fuel Management*, art. 27, INFCIRC/546 (Dec. 24, 1997).

purposes of state responsibility.[115] Under international law, only the actions of government organs[116] and state agents or representatives[117] are attributable to the state.[118] States are not responsible for the delinquencies of ships flying their flags or controlled by their citizens.[119] States do not have a duty to control the activities of private individuals outside their territory, and a clear distinction exists between government and private flag vessels for the purposes of attributing responsibility under international law.[120] Further Appollonia's agreement with the IAEA governing peaceful nuclear activities squarely addresses the issue. It dictated that "[n]o state shall be deemed to have [ ] responsibility for nuclear material merely by reason of the fact

---

[115] Gunther Handl, *State Liability for Accidental Transnational Environmental Damage by Private Persons*, 74 AM. J. INTL. L. 525, 530 (1980); Compromis, ¶ 14.

[116] Draft Articles on State Responsibility, art. 2; *see e.g.*, BROWNLIE, SYSTEM OF THE LAW OF NATIONS, *supra* note 22, at 132-166 (1983); Caron, *The Basis of Responsibility*, *supra* note 22, at 109; Alwyn.V. Freeman, *Responsibility of States for Unlawful Acts of Their Armed Forces*, 88 RECUEIL DES COURS 261 (1956); F. Przetacznik, *The International Responsibility of States for the Unauthorized Acts of their Organs.*, 1 SRI LANKA J. OF INT'L L. 151 (1989).

[117] German Settlers Case, *supra* note 21, at 22.

[118] José Gustavo Guerrero, *Report to the Council of the League of Nations on the Questions which appear Ripe for International Regulation: Responsibility of States for Damage Done in Their Territories to the Person or Property of Foreigners*, League of Nations Doc. C. 196 M. 70 1927 V at 246 (1927).

[119] BROWNLIE, SYSTEM OF THE LAW OF NATIONS, *supra* note 22 at 165; *see also* Barcelona Traction (separate opinion of Judge Gros), *supra* note 8, at 278-79; Draft Articles on State Responsibility, arts. 8, 11; Case Concerning the United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. 3, at ¶¶ 56-58 (Dec. 15).

[120] Lucius Conrad Caflisch, *Some aspects of Oil Pollution from Merchant ships*, 4 ANNALS OF INT'L. STUDIES 213, 216-17 (1973); Hans Blix, *The Protection of the Environment and International Law*, ACADEMIE DE DROIT INT'L, COLLOQUIUM (1975); H. MEIJERS, THE NATIONALITY OF SHIPS 110 (1967); Arnold McNair, *Problems Connected with the Position of the Merchant Vessel in Private International Law, with Particular Reference to the Power of Requisition*, 31 TRANS. GROTIUS SOC'Y at 50 (1946).

that . . . it is being transported under its flag or in its aircraft."[121]

2. Appollonia has met the general duty to protect the marine environment.

In the *Nuclear Weapons* advisory opinion, this Court held that states merely have a "general obligation . . . to ensure that activities within their . . . control respect the environment."[122] No specific duties were articulated by this Court.[123] Similarly, the duty imposed on states party to the 1982 Convention has been described as a "highly general principle . . . [which] is only marginally better than empty rhetoric."[124] Moreover, publicists have further noted that means have not been developed to impose collective responsibilities on states to protect the marine environment.[125] In the *MOX Plant* case, Ireland attempted to prohibit the United Kingdom from producing and shipping MOX by enforcing the United Kingdom's general obligation to protect the marine environment.[126] The tribunal refused to articulate specific duties associated with the obligation and instead unanimously determined that Ireland and the United Kingdom engage in consultations.[127]

---

[121] International Atomic Energy Agency, *The Structure and Content of Agreements Between the Agency and States Required in Connection with the treaty on the Non-Proliferation of Nuclear Weapons*, INF/CIR/153, ¶ 91(b) (June, 1973).

[122] Legality of Nuclear Weapons, *supra* note 7, at 242, ¶ 29.

[123] *Id.*

[124] Donald K. Anton, *Law for the Sea's Biological Diversity*, 36 COLUM. J. TRANSNAT'L L. 341, 365 (1997); *see also* FRANCESCO FRANCIONI & TULLIO SCOVAZZI, INTERNATIONAL RESPONSIBILITY FOR ENVIRONMENTAL HARM 23 (1991); BENEDETTO CONFORTI, DIRITTO INTERNAZIONALE 376-78 (3d. ed., 1989).

[125] Tanaka, *supra* note 101, at 345 (*citing* DAVID HUNTER ET. AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 679 (1998); UNCLOS, Pmbl., art. 192.

[126] The MOX Plant Case, *supra* note 106, at ¶ 26.

[127] *Id.* at ¶ 89.

3. Appollonia's standard of care in shipping MOX is that of due diligence, rather than strict or absolute liability.

Under this Court's decision in the *Corfu Channel* case, a standard requiring due diligence applies to questions of state responsibility for extra-territorial environmental damage.[128] This principle has been widely adopted and is viewed as the most appropriate standard.[129] The due diligence standard imports an element of flexibility which requires the conduct to be assessed in light of the circumstances.[130]

Forseeability is a factor that may determine whether states have acted with due diligence.[131] Here, it was not foreseeable that the ship would fall prey to a pirate attack, that the pirates would disable the ship, and that the ship would eventually hit a sandbar resulting in pollution. Shipments of MOX had traveled the same route on more than twenty occasions without incident. Also, the Insurers of Lading and Shipping Association had decreased their concern regarding the shipping route. [132] Secondly, despite the unforeseeable nature of the

---

[128] Corfu Channel Case, *supra* note 18, at 51; *see also, The pollution of Rivers and Lakes and International Law*, arts. II- III ¶ 1, Institute for International Law, Fifteenth Commission, Sess. of Athens (Sept. 1979); *see also* JEAN GABRIEL CASTEL, INTERNATIONAL LAW, CHIEFLY AS INTERPRETED AND APPLIED IN CANADA 1072 (3d. ed., 1976).

[129] Draft Articles on Prevention of Transboundary Harm from Hazardous Activities 2001, Commentary, International Law Commission, U.N. GA , 56th Sess., Dupp. No. 10 (A/56/10) at 392 (2001); SHAW, *supra* note 48, at 764 Alan E. Boyle, *Nuclear Energy and International Law: An Environmental Perspective*, 1989 BRIT. Y.B. INT'L L. 257, 272-75 (1989); Handl, State Liability *supra* note 115, at 539-540; PATRICIA BIRNIE & ALAN BOYLE, INTERNATIONAL LAW AND THE ENVIRONMENT 112 (2d ed., 1999).

[130] SHAW, *supra* note 48, at 764.

[131] *See* Alabama Claims (US v. UK), *reprinted in* J.D. MOORE, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN PARTY 4156-57 (1898); Home Insurance Co. Case (U.S. v. Mex.), IV R I.A.A. 48, 52 (1926).

[132] Compromis, ¶¶ 10, 12

attack, *The Mairi Maru*'s captain made reasonable decisions taking these unlikely risks into account. *The Mairu Maru's* intended course traversed the middle of the Raglanian Archipelago, rather than the rim where virtually all previous incidents of piracy occurred.[133] When weather conditions changed *The Mairi Maru*'s plans, the captain requested the assistance of Raglan' anti-piracy program.[134]

Finally, Appollonia's conduct is not the "but for" cause of the pollution.[135] Rather it was Raglan's employment of a pirate that caused the accident. Moreover, international law recognizes that in situations where no reasonable degree of diligence could have prevented an event, states are absolved of responsibility.[136] In this case, Appollonia took all available measures to protect *The Mairu Maru* from incident.

Finally, although some commentators have suggested that strict liability governs the conduct of states in the area of environmental protection,[137] relying upon the *Trail Smelter Arbitration*,[138] this interpretation is misguided. In fact, the arbitrators never addressed the issue because the Canadian government accepted liability and agreed to apply United States law.[139]

---

[133] *Id.*

[134] Compromis, ¶ 16.

[135] *See* Salvador Prats Case (Mex. V. US), 3 MOORE ARBITRATIONS 2886, 2893 (1868); The Saint Albans Raid Case (US v. UK), 4 MOORE ARBITRATIONS 4042, 4054 (1873); The Kummerow Redler & Co., Fulda, Fischbach, and Friedericky Cases (Ger. v. Venez.), X R.I. A.A. 369, 400 (1903)

[136] *Id.*

[137] Gunther Handl, *Balancing of Interests and International Liability for the Pollution of International Watercourses: Customary Principles of Law Revisited*, 13 CAN. Y.B. INT'L L. 156, 167 (1975).

[138] The Trail Smelter Case (U.S. v. Can.), III R.I.A.A. 1905 (1941).

Scholars recognize that strict liability is not accepted as a general principle of international environmental law, even in relation to ultra-hazardous activities. [140] Raglan will also argue that Principle 21 of the Stockholm declaration[141] represents customary law imposing strict liability. However, as discussed previously, the Stockholm Declaration expresses a general concern of the international community regarding the environment, but does not serve as a statement of customary international law.[142]

V. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Applicant, the Republic of Appollonia, respectfully requests this Honorable Court to find, adjudge, and declare as follows:

1. That Raglan is liable for the attack and wreck of *The Mairu Maru* and all associated consequences thereof;
2. That Raglan's scuttling of *The Mairu Maru* was illegal, hence, Raglan is responsible for the loss of the vessel and its cargo and owes compensation to Appollonia and its citizens who suffered direct financial and other losses;
3. That Raglan lacks standing to bring a claim for damages to the Norton Shallows; and
4. That Appollonia did not violate international law by failure to notify Raglan or obtain its consent for the shipment of MOX.

Respectfully submitted,

Agents for the Applicant

---

[139] *Id.* at 1965.

[140] SHAW, *supra* note, 48 at 763; Handl, *Balancing of Interests, supra* note 137, at 167-8.

[141] Stockholm Declaration.

[142] Louis B. Sohn, *The Stockholm Declaration*, 14 HARV. INT'L L.J. 423, 427 (1973).