

Team 428R

**THE INTERNATIONAL COURT OF JUSTICE
THE 2023 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION**



CASE CONCERNING THE CLARENT BELT

KINGDOM OF AGLOVALE (APPLICANT)

v.

STATE OF RAGNELL (RESPONDENT)

MEMORIAL FOR THE RESPONDENT

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STATEMENT OF JURISDICTION

The Kingdom of Aglovale (“Aglovale”) and the State of Ragnell (“Ragnell”) have submitted by Article 41 of the Trilateral Treaty of Lasting Peace this present dispute concerning the differences between the parties concerning the Clarent Belt to the International Court of Justice (“ICJ”) pursuant to Article 40(1) of the Statute of the International Court of Justice (“ICJ-Statute”). Therefore, both parties have accepted the jurisdiction of this Court pursuant to Article 36(1) ICJ-Statute, notwithstanding preclusion thereof due to third party interests, Article 36(6) ICJ-Statute.

QUESTIONS PRESENTED

The State of Ragnell respectfully asks this honorable Court:

- A.** Whether the initiation of “Operation Shining Star” and the targeting of Nant Gateway and Compound Ardan were in conformity with the Treaty, and whether these give rise to any obligations;

- B.** whether Ragnell acted in accordance with the Treaty in temporarily employing UAC detainees in the transport of plastic waste to Etna, and in temporarily transferring them to Camlann;

- C.** whether Aglovale violated its Treaty obligations by unilaterally imposing disproportionate and coercive sanctions against Ragnell and Ragnellian nationals, and whether it must immediately withdraw those sanctions, releasing all Ragnellian property frozen and reinstalling all assets seized pursuant to them, and compensate Ragnell for their impact; and

- D.** whether Aglovale violated the Treaty by refusing to cooperate in good faith in the management of the plastic waste, whereas Ragnell complied with its obligations when it forced by that refusal to export the waste to Etna for processing and disposal.

STATEMENT OF FACTS

Background:

The Gais Peninsula comprises three countries: The Federation of Balan (“Balan”), the Kingdom of Aglovale (“Aglovale”), and the State of Ragnell (“Ragnell”). In the peninsula’s north is an inaccessible, mountainous area called the Clarent Belt (“Belt”) with Tintagel Coast being the only habitable part of it. The Eamont Thruway connects Tintagel Coast with the rest of the peninsula.

During the Clarent War in the 1950s, the Belt was contested between Balan and Ragnell. In 1958, Balan, Ragnell, and Aglovale reached an agreement and concluded the TTLP. They agreed on Balan becoming sovereign of the Belt and Ragnell leasing it for a period of 65 years. After conclusion of the TTLP, many new Ragnellian factories started operating in the Belt, contributing significantly to its economic advancement. Among them were several environmentally friendly waste management facilities, one of them being the largest of its kind in the region.

Meanwhile, a Balani group called Unityk Ai Chyvon (“UAC”) formed, loudly criticizing the TTLP. Over the years, UAC grew stronger. They began crippling Ragnellian businesses, attacking Ragnellian security units, and killing citizens in the Belt. Ragnell requested Balan to take sufficient action to end violence in the Belt caused by UAC, but no improvement was made.

“Operation Shining Star”:

To bring UAC’s attacks to a halt, Ragnell’s President Vortigern launched “Operation Shining Star” (“O.S.S.”). In the “swift and decisive” operation, Ragnellian military moved in to fight UAC and protect Ragnellians. UAC and Ragnellian forces hardened.

Targeting of Nant Gateway:

Nant Gateway is the tunnel mouth channeling Eamont Truway into the Belt. After intelligence coming from Etna, a friendly State towards Ragnell, indicated that many UAC fighters were on their way to the Belt using the Eamont Truway, Ragnell destroyed Nant Gateway at 3:43 a.m., killing 30 UAC fighters.

Targeting of Compound Ardan:

Compound Ardan was identified by Ragnell as a secret UAC base from which attacks against Ragnellian forces originated. A Balani informant confirmed that only combatants were there. This was proved by cellphone pictures and a map. The information coincided with Ragnell's recent drone footage. According to it, one of the five houses in the compound – Warehouse 15 – does not contain people, but an arsenal of weapons. When the Ragnellian commander staff was sure about the targets character, all five houses were eliminated. Contrary to expectations, 76 civilians were killed by the destruction of Warehouse 15. After that, it turned out the Balani informant had a history of providing misleading intelligence.

The hazardous waste:

“The Plastics Conglomerate” is a Ragnellian state-of-the-art facility processing plastic waste. It is the largest facility of its kind and processes about 200,000 metric tons p.a. During the COVID-19 pandemic extended production of plastic-based medical supplies created an enormous amount of additional waste. The Plastics Conglomerate had one of two facilities being able to process this contaminated waste. November 2021, the main waste treatment plant was the site of UAC attacks, which Ragnell tried to curb. The factory was rendered inoperative; repairing it would take eight months.

Ragnell instigated negotiations with Aglovale that had the only other suitable waste treatment facility. Aglovale was unwilling to come to an agreement. December 2021, Aglovale terminated negotiations entirely due to the bombing of Nant Gateway. Since leaving the waste accumulate in the Belt would lead to an environmental and health crisis, Ragnell came to an agreement with Etna. Ragnell will ship the waste to Etna, that committed to dispose of the waste in an environmentally sound manner. However, later on some reports claimed that this was not the case.

Employment:

Ragnell was able to capture many UAC fighter and detained them in Fort Caerleon in the Belt. When the export of plastic waste to Etna faltered due to a limited number of Ragnellian workers still being in the Belt, and the waste having to be removed urgently, the UAC prisoners were taken to Tintagel Coast to help loading the ships. In the process, they were provided with protective equipment and paid marked wages. Nothing is known about any cases of illness or death.

Detainment:

In late March, Ragnell transferred all UAC fighters, almost 1.000, from Fort Caerleon to Cam-lann Correctional Center, a security prison in northern Ragnell. This was done to protect them as the fighting came closer to Fort Caerleon.

The sanctions legislation:

April 2022 Aglovale's Parliament enacted sanctions legislation against Ragnell, that included: Freezing of bank accounts and asset seizures of Ragnellian government officials and Vortigern's supporters; travel bans on those individuals; freezing the funds of Ragnell's central and other major banks; and imposing an embargo on Ragnell's industrial, aviation, transportation, and security sectors.

This was justified with an alleged "war of aggression" conducted by Ragnell.

The sanctions legislation led to a collapse of Ragnell's economy. Its health care system was significantly affected. Inflation and unemployment rose enormously.

Aglovale also seized the Aglovalean summer home of a primary donor to the governing party because of his alleged attempts to circumvent the sanctions.

SUMMARY OF PLEADINGS

– Claim A –

Claim A falls outside this Court’s jurisdiction, since otherwise the indispensable party principle would be violated. Balan’s possible invocation, as the mostly special affected State, prevails over Aglovale’s invocation of obligations *erga omnes*. Therefore, Aglovale’s standing is limited to the death of eight of its nationals.

On the merits, “Operation Shining Star” (“O.S.S.”) is conducted with Balan’s consent, otherwise it is justified due to self-defense. Self-defense against UAC on Balani ground is lawful since UAC conducted an armed attack, Balan is unable to stop UAC and the measures were necessary and proportionate. O.S.S. further did not violate international humanitarian law (“IHL”) or obligations rooting in the Trilateral Treaty of Lasting Peace (“TTLP”).

Nant Gateway is a legitimate military objective and its targeting was not to be expected as disproportional. Since its targeting complied with IHL, the killing of UAC fighter was not arbitrary under Article 6 ICCPR.

The targeting of Compound Ardan was an honest and reasonable mistake. The operators believed in the military character of that target and conformed with obligations of precaution. This excuses the targeting of Warehouse 15 housed by 76 civilians. Thus, the killing was neither a violation of IHL, nor arbitrary under Article 6 ICCPR.

– Claim B –

Aglovale lacks standing regarding alleged human rights violations. Those are not obligations *erga omnes*.

On the merits, UAC detainees are prisoners of war (“POW”). Their employment is not unhealthy or dangerous, thus complied with applicable IHL. Regardless of the lack of standing, human rights are not violated as IHL displaces human rights as *lex specialis*. In any case, with respect to human rights, the employment does not constitute forced labor under Article 8(3)(c)(iii) ICCPR.

The accommodation in Camlann Correctional Center defeats the purpose and sense of a conflicting IHL-prohibition. To that extent, the prohibition cannot be implicated here. Therefore, the detention is not arbitrary under Article 9(1) ICCPR.

– Claim C –

By imposing the sanctions legislation, Aglovale committed an internationally wrongful act. The sanctions are coercive and interfere with Ragnell's *domaine réservé*. Hence, they violate the customary principle of nonintervention. This amounts to a violation of Ragnell's State sovereignty arising from the UN-Charter. The sanctions cause a life-threatening situation which results in an infringement of the right to life. By seizing Kay Ector's summer home, Aglovale interfered with his right to privacy, which Ragnell can claim under diplomatic protection. The sanctions legislation further violates Article 2(3) TTLP in connection with the GATT. This Court has jurisdiction over this claim since the WTO's DSU does not provide a viable judicial forum. The sanctions violate the Most-Favored Nations principle and the prohibition of quantitative restrictions. These violations are not justified under the security exception.

The wrongfulness of the sanctions is not precluded as a countermeasure. They are partly not directed against a State. Ragnell did not commit an internationally wrongful act. In any case, Aglovale is not an injured State. In any case, the measures are un-proportionate. Hence, Aglovale committed an internationally wrongful act and therefore owes compensation to Ragnell and its nationals.

– Claim D –

By refusing to cooperate with Ragnell, Aglovale violated its Treaty obligations. Interrupting negotiations constitutes bad faith. Hereby, Aglovale violated its obligation to protect the environment and human health within and surrounding the Gais Peninsula. The refusal to cooperate is not justified as a countermeasure. Ragnell did not commit an internationally wrongful act and Aglovale is not an injured State. In any case, the halt of negotiations is neither proportionate nor are the effects reversible.

On the other hand, Ragnell acted in conformity with its Treaty obligations by shipping the waste to Etna. Ragnell complied with its procedural obligations. In any case, there is no evidence of a substantial risk and Ragnell exercised its due diligence obligations. Ragnell did not violate its obligation to protect the environment and human health. In any case, the wrongfulness of the shipment is precluded due to a state of necessity. The shipment was the only way to prevent an environment and health calamity. It does not impair any essential interests.

A. The initiation of “Operation Shining Star” and the targeting of Nant Gateway and Compound Ardan were in conformity with the Treaty and do not give rise to any obligations.

The Kingdom of Aglovale’s (“Aglovale”) claim does not fall within this Court’s jurisdiction (**I.**). In addition, Aglovale’s standing is limited (**II.**). In any case, the State of Ragnell (“Ragnell”) complied with its treaty obligations (**III.**) and is thus not obliged to compensate (**IV.**).

I. Aglovale’s claim falls outside this Court’s jurisdiction.

It is this Court’s constitutional rule that its jurisdiction is limited to the consent of States party to the dispute, Article 36 Statute of the International Court of Justice¹ (“ICJ-Statute”).² Thereby, all parties to a dispute must consent to proceedings.³ Generally, decisions of this Court only have binding force *inter partes*, Article 59 ICJ-Statute. Nevertheless, this Court has recognized that its decisions have second-order effects on third States.⁴ Hence, indispensable third States must consent too.⁵

While Aglovale and Ragnell expressed their consent through Article 41 Trilateral Treaty of Lasting Peace (“TTLP”),⁶ the Federation of Balan (“Balan”) is indispensable (**1.**) and did not express its consent (**2.**).

1. Balan is indispensable.

A State is indispensable if this Court cannot decide upon the dispute presented without addressing questions of a third State’s legal interests.⁷ The very subject-matter of Aglovale’s claim requires determinations about Balan’s territory in relation to the alleged violation of a peremptory norm of international law, the prohibition of the use of force. In this regard, specifically *sic utere tuo ut alienum*

¹ 15, UNCIO, 335.

² *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)*, ICJ Rep 1954, 19, 32, (“*Monetary Gold*”); *East Timor (Portugal v. Australia)*, ICJ Rep 1995, 90, ¶26, (“*East Timor*”).

³ Orakhelashvili, ‘Consensual Principle’ in Peters (ed), *MPEPIL (Online)*, ¶33.

⁴ Mollengarden/Zamir, ‘The Monetary Gold Principle: Back to Basics’ (2021) 115(1), *AJIL*, 41, 43, 67.

⁵ *Monetary Gold*, 32.

⁶ Trilateral Treaty of Lasting Peace, Done and entered into force 16 September 1958.

⁷ *East Timor*, ¶28.

non laedas must be examined. Moreover, the claim concerns alleged violations of international humanitarian law (“IHL”) and human rights law by and against Unityk Ai Chyvon (“UAC”), Balani nationals. Thus, Balan’s legal interest constitutes the very subject-matter of the claim.

2. Balan has not expressed its consent.

Article 41 TTLP as a compromissory clause does not clarify whether it only expresses the consent of the parties in procedural terms or also the consent of a third, indispensable Party. The interpretation of an ambiguous legal norm is regulated by customary Articles 31, 32 of the Vienna Convention on the Law of Treaties (“VCLT”),⁸ The object and purpose of the TTLP aims to unify Balan, Aglovale, and Ragnell, as expressed in the Preamble and Article 41 TTLP. Instituting bilateral proceedings before this Court after trilateral negotiations beforehand proves Aglovale’s *mala fide*. Therefore, the proceedings before this Court must take place in threes as well, thus Article 41 TTLP does not express the *automatic* consent of a third, indispensable State.

II. Aglovale’s standing is limited.

Standing before this Court demands a legal interest of the Applicant. Such an interest can derive from special interest of the Applicant providing a special affectedness⁹ or from alleged violations of obligations owed to the global community as a whole, obligations *erga omnes*.¹⁰ The invocation of the alleged violation of an *erga omnes* obligation is subsidiary to the invocation of the specially affected State.¹¹ Therefore, enforcement *via erga omnes* is barred until the State with the special interest waives its privilege.¹² Aglovale’s special interest is limited to the alleged violation of Article 15 TTLP and alleged violation of IHL, and human rights law relating to the death of eight of its nationals. In relation to the other alleged violations Balan has a special interest and reserves its right to bring a subsequent action. Therefore, Balan’s invocation prevails over Aglovale’s action. Therefore, Aglovale has no standing regarding violations other than Art. 15 TTLP, IHL and human rights regarding its nationals.

⁸ 1155, UNTS, 331; *Jadhav (India v. Pakistan), Merits*, ICJ Rep 2019, 418, ¶71.

⁹ *Arctic Sunrise Arbitration (The Netherlands v. Russia)*, Case No 2014-02, 117.

¹⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, ICJ Rep 2012, 422, ¶69.

¹¹ Crawford, *State Responsibility*, 365-366.

¹² *Application on the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Declaration Judge Ad hoc Kreß*, General List No 178, ¶29.

III. In any case, Ragnell complied with TTLP.

1. The initiation of “Operation Shining Star” conformed with TTLP.

“Operation Shining Star” (“O.S.S.”) neither violated Article 2(4) Charter of the United Nations (“UN-Charter”)¹³ (a.), nor international humanitarian law (IHL) (b.), nor Articles 3, 14 TTLP (c.).

a. O.S.S. is no prohibited use of force.

The alleged operation is not a prohibited use of force, Article 2(4) UN-Charter (aa.). In any case, Ragnell acted in self-defense (bb.).

aa. O.S.S. is allowed use of force due to Balani consent.

States may deviate from the prohibition with the consent of another State.¹⁴ Such consent, which represents an intentional waiver of the protection of the prohibition, can be expressed through a treaty.¹⁵ Article 11(1)(c) TTLP allows Ragnell to use police forces to maintain peace and order. However, considering the treaty’s context, Article 31(1) VCLT, it becomes apparent that military action may also be permitted to reach that goal: Article 14(b) TTLP lists Article 11(1)(c) TTLP as an exception to that rule. *E contrario*, TTLP regards measures under Article 11(1)(c) TTLP as allowed militarization. Balan consented to military peacekeeping operations by Ragnell under the TTLP.

bb. In any case, self-defense against UAC is lawful under Article 51 UN-Charter.

There is a right of self-defense against non-State actors. ((1.)). UAC’s attacks constitute an armed attack ((2.)). Balan must acquiesce to the exercise of the right of self-defense ((3.)). The exercise of self-defense was necessary and proportionate ((4.)).

(1.) States may act in self-defense against non-State actors.

The right of self-defense in Article 51 UN-Charter entitles a State to exercise self-defense if an armed attack confronts it. Nothing in the wording limits the perpetration of an armed attack to States.¹⁶ After

¹³ 1, UNTS, 16.

¹⁴ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Merits*, ICJ Rep 2005, 168, ¶¶92-105, (“*Armed Activities*”).

¹⁵ Dörr, ‘Turkey’s Intervention in Cyprus - 1974’ in Ruys and Corton (eds), *The Use of Force in International Law*, 208.

¹⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Separate Opinion Judge Higgins*, ICJ Rep 2004, 207, ¶33; Shaw, *International Law*, 994.

11 September 2001, NATO,¹⁷ OAS,¹⁸ and EU¹⁹ declared their support for the United States' ("USA") actions against Al-Qaeda.²⁰ All accompanying UNSC resolutions affirmed the right to self-defense against non-state actors.²¹

(2.) UAC committed an armed attack against Ragnell.

Since the terms of Article 51 UN-Charter only require an armed attack against a Member, it must not be directed against its territory.²² State practice affirms that an attack against a State's nationals may constitute an armed attack against the State.²³ Even small numbers of affected nationals suffice to launch self-defense operations, e.g. 52 Americans in Tehran or roughly 100 in Entebbe.²⁴ It is recognized by this Court that an attack against official State bodies give rise to an armed attack against the State, as decided in *Tehran Hostages*,²⁵ which is confirmed by commentators.²⁶ Since the territory is protected by international law, the same must apply to partial rights on territory as a lease.²⁷ The

¹⁷ NATO, 'Statement by the North Atlantic Council, 12. September 2001'.

¹⁸ Organization of American States, Meeting of Consultation of Ministers of Foreign Affairs - Terrorist Threat to the Americas.

¹⁹ European Council, '2372nd Council meeting - Action Against the Taliban - Council Statement, 8 and 9 October 2001'.

²⁰ Wood, 'Terrorism and the International Law on the Use of Force', *Saul (Hg.) 2020 – Research Handbook on International Law*, 184-185.

²¹ UNSC, 'Resolution 1368', (S/Res/1368); UNSC, 'Resolution 1373', (S/Res/1373).

²² *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, ICJ Rep 1980, 3, ¶¶57, 64, ("*Tehran Hostages*"); *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Merits*, ICJ Rep 2003, 161, ¶¶72, 77.

²³ Ministry of Defence of the United Kingdom, 'Joint Doctrine Publications 3-51', ¶3B.2; United States, (S/13908), 119; McDowell, 'United Nations: Security Council Debate and Draft Resolutions Concerning the Operation to Rescue Hijacked Hostages at the Entebbe Airport' (1976) 15(5), ILM, 1224.

²⁴ Eichensehr, 'Defending Nationals Abroad: Assessing the Lawfulness of Forcible Hostage Rescues' (2008) 48(2), *Va J Int'l L*, 452, 462.

²⁵ *Tehran Hostages*, ¶¶57, 64.

²⁶ Berman/Gow/others. 'The Chatham House Principles of International Law on the Use of Force in Self-Defence' (2006) 55(4), *ICLQ*, 963, 965; Dinstein, *War, Aggression and Self-Defence*, 197.

²⁷ Brownlie, *International Law and the Use of Force by States*, 398-399.

attacks killed Ragnellian nationals²⁸ and law enforcement officials,²⁹ and crippled businesses,³⁰ impeding Ragnell's taxation rights. UAC conducted an armed attack.

(3.) Balan must tolerate the exercise of the right of self-defense in the Belt.

For cases in which the aggressor is a non-State actor residing in a State, USA,³¹ Russia,³² India,³³ South Africa,³⁴ Israel³⁵ and others,³⁶ accompanied by scholarship,³⁷ have developed the “unwilling or unable”-doctrine. According to that doctrine a State must acquiesce the operations of the defending State on its territory if it is unwilling or unable to prevent these attacks. This outflows the general principle of *sic utere tuo ut alienum non laedas*.³⁸ Balan solely raided UAC clubs and arrested crime suspects.³⁹ Checks of commercial vehicles were promised, but the situation did not improve.⁴⁰ Since Balan was not able to restrict UAC's activities,⁴¹ it violated that principle. According to the doctrine, Ragnell was entitled to exercise self-defense on Balani territory against the aggressor.

²⁸ ‘Statement of Agreed Facts’, (SAF), ¶¶26, 30.

²⁹ *ibid*, ¶25.

³⁰ *ibid*.

³¹ United States, (S/2014/695).

³² Russia, (A/57/269-S/2002/854).

³³ Indian Ministry of External Affairs, ‘Statement by Foreign Secretary on 26 February on the Strikes on JeM training camp at Balakot’.

³⁴ United Nations, Yearbook of the United Nations, 189.

³⁵ Israel, (A/60/937-S/2006/515).

³⁶ Canada, (S/2015/221); Germany, (S/2015/946); Turkey, (S/2015/563).

³⁷ Berman/Gow/others (n 26), 969-970; Bethlehem, ‘Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors’ (2012) 106(4), AJIL, 770, 776; Wood, ‘Self-Defence Against Non-State Actors - A Practitioner's View’ (2017) 77, ZaöRV, 76.

³⁸ *Island of Palmas case (Netherlands v. USA)*, RIAA II, 829, 839; *Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Merits, ICJ Rep 1949, 4, 22-23.

³⁹ SAF (n 28), ¶26.

⁴⁰ *ibid*, ¶¶26, 30.

⁴¹ *ibid*, ¶26, 27.

(4.) O.S.S. was necessary and proportionate.

The lawfulness of self-defense depends on necessity and proportionality.⁴² An operation is necessary if there are no other means to halt the armed attack.⁴³ Proportionality requires a reasonable relationship between all applied measures.⁴⁴ Even after repeated requests, Balan has been unable to effectively stop UAC, making Ragnell's intervention necessary. Since O.S.S. is limited to the Belt, UAC's area of attacks, it is proportionate.

b. O.S.S. complies with IHL.

aa. Additional Protocol I is applicable.

Generally, only States may be parties to the Geneva Conventions and Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of International Armed Conflict ("AP I").⁴⁵ However, in case of war of national liberation,⁴⁶ this includes peoples fighting against colonial domination and alien occupation in the exercise of their right of self-determination.⁴⁷ This further presupposes qualification of the group representing the fight as *armed force* under Article 43 AP I.⁴⁸ Armed forces are organized groups, subject to an internal disciplinary compliance with the rules of international humanitarian law, with responsible command of the authority aforementioned.⁴⁹ If those criteria are met, recognition by the adverse Party is obsolete.⁵⁰ Application of the Conventions can then be claimed by unilateral declaration under Article 96(3) AP I.⁵¹

⁴² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, ICJ Rep 1986, 14, ¶176, ("*Nicaragua (Merits)*").

⁴³ ILC, 'Addendum - Eighth report on State responsibility by Mr. Roberto Ago, Special Rapporteur - the internationally wrongful act of the State, source of international responsibility (part 1)', (A/CN.4/318/Add.5-7, YILC 1980, vol. II, Part One, 1980), 69, ¶120.

⁴⁴ *ibid*, 69, ¶121; Greenwood, 'Self-Defence' in Peters (ed), *MPEPIL (Online)*, ¶27.

⁴⁵ 1125, UNTS, 3; Crawford Emily, 'Armed Conflict, International' in Peters (ed), *MPEPIL (Online)*, ¶1.

⁴⁶ ICRC, Commentary on the Additional Protocol I, ¶66.

⁴⁷ Cf. AP I, Article 1(4); Glazier, 'Wars of National Liberation' in Peters (ed), *MPEPIL (Online)*, ¶3.

⁴⁸ ICRC (n 46), ¶1661.

⁴⁹ AP I, Article 43(1).

⁵⁰ *ibid*.

⁵¹ ICRC (n 46), ¶1661.

UAC unilaterally declared representation of the Balani people in its fight for self-determination and claimed applicability of IHL.⁵² It has well-organized command-and-control structures,⁵³ carries arms openly,⁵⁴ and seeks to apply IHL.⁵⁵ The depositary noted that UAC's declaration had the effect that the Geneva Conventions are applicable.⁵⁶ Therefore, the Geneva Conventions and AP I apply.

bb. Ragnell did not violate Article 60 AP I.

Article 60 AP I prohibits only military operations in demilitarized zones conflicting with the demilitarization agreement. Article 14 TTLP, the agreement to demilitarize the Belt, explicitly allows Ragnell's presence to ensure peace and order⁵⁷ and is thus not violated.

c. Ragnell did not violate Article 3 TTLP.

Article 3 TTLP emphasizes the temporal component of this obligation. It demands the termination of hostilities between Ragnell and Balan during the Clarent War of 1952-1958. After the exchange of instruments of ratification, Ragnell withdrew in accordance with TTLP. A renewed military presence is therefore no longer covered by Article 3 TTLP, but by Article 14 TTLP instead. Moreover, Ragnell did not conduct hostilities against Balan, but against UAC.

d. In any case, violations of Articles 3, 14 TTLP are justified.

Self-defense is not only capable of justifying use of force, but also other violations of international law.⁵⁸ That is reflected in the International Law Commission's ("ILC") 2001 Articles on State Responsibility ("ARSIWA").⁵⁹ Since Ragnell acted in self-defense, and violations of Articles 3, 14 TTLP would have been necessary to stop UAC, thus justified.

⁵² 'Clarifications to the Statement of Agreed Facts', (Clar. SAF), 7.

⁵³ SAF (n 28), ¶35.

⁵⁴ *ibid.*

⁵⁵ Clar. SAF (n 52), 7.

⁵⁶ *ibid.*

⁵⁷ A.III.1.a.aa

⁵⁸ *Nicaragua (Merits)*, ¶74, 226; *Legality of the Threat or Use of Nuclear Weapons*, ICJ Rep 1996, 226, ¶30, ("*Nuclear Weapons*").

⁵⁹ ILC, 'Draft articles on responsibility of States for internationally wrongful acts, with commentaries', ("ARSIWA with commentaries", A/56/10, YILC 2001, vol. II, Part Two, 2001), Article 21.

2. The targeting of Nant Gateway conformed with the TTLP.

a. The targeting of Nant Gateway complied with IHL.

Article 52(2) AP I limits the lawfulness of attacks to military objectives. A military objective is considered as such, if it contributes to military actions and its destruction offers a military advantage.⁶⁰ The classification as a military target under these conditions occurs regardless of whether the target has parallel civilian utility.⁶¹ Nant Gateway was used as a strategic supply route for fighters and ammunitions, thus, it was militarily used by UAC.⁶² Since Ragnell's forces were in sustained combat with UAC, its bombing generated a definite military advantage.

b. Ragnell complied with Article 6 ICCPR.

Article 6 of the International Covenant on Civil and Political Rights ("ICCPR")⁶³ prohibits the arbitrary deprivation of life. In interpreting the ICCPR, the Human Rights Committee's ("HRC") case law and interpretation must be considered.⁶⁴ This is manifested by this Court in the Diallo judgment.⁶⁵ Since IHL is *lex specialis* to human rights law,⁶⁶ according to the HRC a lawful measure under IHL cannot constitute an arbitrary deprivation of life under human rights.⁶⁷ Human rights are not violated.

c. Ragnell did not violate Article 15 TTLP.

If a State exercises self-defense, it may suspend its treaty performance if that performance is incompatible with the right of self-defense.⁶⁸ According to the ILC's Draft Articles on effects of armed conflicts on treaties ("EACT") this applies explicitly to third States, that are not engaged in the armed

⁶⁰ AP I, Article 52(2).

⁶¹ *Prosecutor v. Prlić*, IT-04-74-T, ¶¶1364-1366.

⁶² SAF (n 28), ¶41.

⁶³ 999, UNTS, 171.

⁶⁴ Nisuke, 'General Comments/Recommendations' in Peters (ed), *MPEPIL (Online)*, ¶43.

⁶⁵ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, ICJ Rep 2010, 639, ¶66, ("*Diallo*").

⁶⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Rep 2004, 136-203, ¶106, ("*Wall Opinion*").

⁶⁷ HRC, 'General Comment No. 36', (CCPR/C/GC/36), 64.

⁶⁸ ILC, 'Draft Articles on effects of armed conflicts on treaties, with commentaries', ("EACT", YILC 2011, vol. II, Part Two), Article 14; The Institute of International Law, 'The Effects of Armed Conflicts on Treaties', Article 7.

conflict.⁶⁹ Ragnell exercised its right of self-defense when targeting Nant Gateway.⁷⁰ A strict performance of Article 15 TTLP would restrict the inherent right of self-defense. Ragnell was entitled to suspend the operation of that Article.

3. The targeting of Compound Ardan was in conformity with the TTLP.

a. The targeting was in conformity with IHL.

IHL prohibits the bombing of non-military objectives.⁷¹ If a non-military objective is attacked, that *prima facie*-violation of Article 52(1) AP I may be excused due to an honest and reasonable mistake.⁷² The mistake is honest if the operator did not realize the false assessment of the target.⁷³ There is reasonableness if the mistake occurred in spite of the observance of the obligations of precaution.⁷⁴ The obligation of precaution, Article 57 AP I, demands all feasible measures were taken before the attack to preclude an illegitimate targeting. “Everything feasible” means everything that is practically possible under the concrete circumstances.⁷⁵

Ragnell attempted to verify the target based on three sources:⁷⁶ First, the Balani informant’s oral report. Second, his cellphone pictures and map. Since a false tip would lead to Balani casualties, the informant could not be expected to lie. Third, corroborating drone footage, which is no more than four weeks old. Ragnell’s military leadership met as a collective and approved the attack, which approves its reasonableness. The time pressure must be considered as well, since an attack on Ragnellian forces could have started any time.⁷⁷ Ragnell has done everything feasible in that moment, the obligation of precaution was not violated. Thus, the mistake was reasonable. Since the operators had no idea of the civilians in Warehouse 15, the mistake was honest in addition. The mistake is excused – there is no wrongful violation of Article 52(1) AP I.

⁶⁹ ILC, ‘EACT, with commentaries’ (n 68), 118 ¶3.

⁷⁰ A.III.1.a.bb.

⁷¹ AP I, Articles 48-52.

⁷² Milanovic, ‘Mistakes of Fact When Using Lethal Force in International Law: Part I’, (14 January 2020).

⁷³ Cf. *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, ¶¶ 59, 60.

⁷⁴ Milanovic (n 72).

⁷⁵ AP I, Article 57(2)(a)(i); ICRC (n 46), ¶¶ 2198, 2199.

⁷⁶ SAF (n 28), ¶47.

⁷⁷ *ibid*, ¶¶47, 48.

b. The targeting did not violate Article 6 ICCPR.

A killing in armed conflict is not arbitrary if it is lawful under IHL.⁷⁸ Since the targeting was lawful under IHL,⁷⁹ the killing was not arbitrary.

IV. The conduct alleged (A.) does not give rise to any reparations.

As the claims are neither covered by the jurisdiction of this Court,⁸⁰ nor constitute an internationally wrongful act,⁸¹ Ragnell is not obliged to pay reparations.

⁷⁸ CCPR/C/GC/36 (n 67), ¶64.

⁷⁹ A.III.3.a.

⁸⁰ A.I.

⁸¹ A.III.

B. Ragnell acted in accordance with the Treaty in temporarily employing UAC detainees in the transport of waste to Etna, and in temporarily transferring them to Camlann Correctional Center.

I. Aglovale lacks standing.

Standing demands special interest or common interest.⁸² The invocation of responsibility *erga omnes* fails when the specially affected State has not waived its right to bring a subsequent action.⁸³ Aglovale is neither specially affected by the alleged violation, nor did Balan, having a special interest, waived its right to invoke responsibility.⁸⁴

In any case, regarding any human rights violations arising from Articles 8(3) and 9(1) ICCPR, Aglovale cannot even invoke standing via *erga omnes*. Even though basic human rights are recognized as obligations *erga omnes*, Articles 8(3) and 9(1) ICCPR are not among them.⁸⁵

II. In any case, Ragnell's employment of captured UAC fighters conformed with the TTLP.

1. The employment is lawful under IHL.

a. The employment is lawful under the law governing international armed conflict.

aa. UAC fighters are prisoners of war.

Prisoners of War ("POW") are *inter alia* those members of the armed forces conflicting party who fall into the hands of the other party, Article 4 Convention Relative to the POW ("Geneva III").⁸⁶ Since UAC's senior commander subjects UAC to the applicable IHL under Articles 1(4), 96(3) AP I,⁸⁷ UAC is a Party to the conflict.⁸⁸ UAC fighters, *i.e.*, members of a Party to the conflict's armed forces, therefore are POW under Article 4 Geneva III.

⁸² A.II.

⁸³ A.II.

⁸⁴ SAF (n 28), ¶62.

⁸⁵ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Second Phase, ICJ Rep 1970, 3, ¶¶33, 34, ("*Barcelona Traction*"); ILC, 'Report of the International Law Commission', (A/74/10), 145, 147.

⁸⁶ 75, UNTS, 135.

⁸⁷ A.III.1.b.aa.

⁸⁸ Clar. SAF (n 52), ¶7.

bb. Geneva III and AP I are not violated.

Art. 52(1) Geneva III prohibits employing POW in dangerous or unhealthy work unless they volunteer for it. The terms dangerous and unhealthy are ambiguous and require interpretation via the Conventions wording and context. According to Black's Law Dictionary, dangerous and unhealthy work is characterized through general unsafety and liability to cause diseases, thus, a probability of harm. Contextual interpretation⁸⁹ confirms this: As Art. 52(3) Geneva III names removal of mines as an example for dangerous work, there must be a significant likelihood of harm. Considering that Articles 50, 55 Geneva III oblige the employing state to provide POW with safety gear and medical support, the dangerous or unhealthy nature of the work must be evaluated on a case-by-case basis with respect to adequacy of those external conditions. Hence, work is dangerous or unhealthy if the workers are exposed to a tangible risk of harm, taking into account endowment with suitable gear. Regarding bacteria, risk of harm can be equated with probability of transmission.

They help load ships and are paid market rates.⁹⁰ Since loading a ship is a transportation task and the disposal of the materials is necessary,⁹¹ this is a public service. Moreover, this work is not dangerous or unhealthy. This follows on the one hand from the systematic comparison⁹² in Article 52(3) Geneva III, which lists the removal of mines an example of prohibited labor. Even if the plastic waste contains toxic substances, this cannot be compared with the danger posed by mines. On the other hand, hazar-dousness is mitigated by the necessary protective equipment given to the workers.⁹³ Ragnellian non-POWs also work there, and their treatment is similar to that of POWs.⁹⁴ Ragnellian nationals would have a motivation to leave the area, as they were also advised.⁹⁵ The fact that they stay to work there can therefore be seen as an indication that the work is feasible and tolerable. If the UAC had perceived the work as dangerous or unhealthy, they would also have had the option of seeking legal protection under Article 78 Geneva III. The fact that this remedy remains unused speaks for a consensus among UAC and Ragnellian officials that the work is allowed under Article 52 Geneva III.⁹⁶ Lastly, the International Committee of the Red Cross apparently had no objection to the work because it could have visited Fort Caerleon and talked to the POWs there about the work in Tintagel Coast.⁹⁷

⁸⁹ VCLT, Article 31(1).

⁹⁰ SAF (n 28), ¶44.

⁹¹ *ibid*, ¶38.

⁹² VCLT, Article 31(1).

⁹³ ICRC, Commentary on the Third Geneva Convention, ¶2744; SAF (n 28), ¶44.

⁹⁴ *Clar.* SAF (n 52), ¶5.

⁹⁵ SAF (n 28), ¶36.

⁹⁶ ICRC (n 93), ¶2744.

⁹⁷ SAF (n 28), ¶50.

The ICRC had the possibility to visit Fort Caeleon and the ship loading, but raised no concerns.⁹⁸ Thus, the employment of UAC fighters is lawful under IHL.

2. The employment is lawful under human rights law.

a. The application of human rights is superseded by IHL as *lex specialis*.

Lex specialis derogat legi generali. IHL refers precisely to armed conflicts and is therefore more specific than the generally applicable human rights law. Thus, forced labor that occurs in connection with an armed conflict is governed solely by IHL, as long as not the core of human rights⁹⁹ provisions are violated.¹⁰⁰

The employment of UAC fighters takes place in the context of an armed conflict; it was lawful under Geneva III.¹⁰¹ Since forced labor is not an absolute prohibition in human rights law¹⁰², the core of human rights is not affected. To that extent, IHL displaces human rights law.

b. In any case, the employment of UAC fighters does not constitute forced labor.

Forced labor is generally prohibited under Article 8(3)(a) ICCPR. However, Article 8(3)(c)(iii) ICCPR leaves all services called up in cases of emergency or calamity threatening the life or well-being of the community not subject to the prohibition. Such cases are recognized for war and violent epidemic or epizootic diseases.¹⁰³ Especially the systematic comparison, Article 31(1) VCLT, between Article 4(1) and Article 8(3)(c)(iii) ICCPR shows that the latter requires a clearly lowered threshold for a state of emergency that includes regional, limited dangers.¹⁰⁴

There is war raging on in the Belt and the quantities of contaminated waste pose the significant threat of an epidemic disease.¹⁰⁵ This constitutes a case of emergency under Article 8(3)(c)(iii) ICCPR, precluding classification as forced labor.

III. Ragnell's detainment of captured UAC fighters conformed with TTLP.

The internment of UAC fighters at Camlann Correctional Center is lawful under IHL (1.) and human rights law (2.).

⁹⁸ SAF (n 28), ¶50.

⁹⁹ Cf. ICCPR, Article 4(2).

¹⁰⁰ Germany, 'Federal Foreign Office - International humanitarian law', (21 November 2018).

¹⁰¹ B.II.1.a.bb.

¹⁰² Cf. ICCPR, Article 4(2) in relation to Article 8(3).

¹⁰³ Schabas/Nowak, UN International Covenant on Civil and Political Rights, 233.

¹⁰⁴ *ibid.*

¹⁰⁵ SAF (n 28), ¶¶38, 45.

1. The detainment is lawful under IHL.

UAC fighters are POW; their housing is governed by Geneva III. This stipulates that POW are not to be accommodated in penal institutions. The purpose of this prohibition is to ensure that preventive internment does not take on a repressive punitive character and that POW are not endangered by non-POW criminals.¹⁰⁶ Only a personal interest of POW can justify such housing.¹⁰⁷ Another imperative of Geneva III is that the POW be kept away from the battlefield at all costs so as not to endanger them, Article 23 Geneva III.

The purpose of the prohibition on housing POW in penal institutions is not compromised here. The housing standard at Camlann Correctional Center is the same as at Fort Caerleon.¹⁰⁸ Further, physical separation from offenders is assured.¹⁰⁹ In addition, POW have a vested interest in being safe from harm caused by the war. Thus, the housing in Camlann Correctional Center was justified by POW's interests and complied with Ragnell's duty under Article 23 Geneva III. Notably, Ragnell chose an accommodation in the north,¹¹⁰ which is therefore still as close as possible to the Belt.

2. The detainment is lawful under human rights law.

Art. 9(1) ICCPR prohibits arbitrary arrest and internment. According to the European Court of Human Rights ("ECtHR"),¹¹¹ in relation to internment, human rights must be considered in light of the applicable IHL.¹¹² Comparable to arbitrariness in the case of killing,¹¹³ arbitrariness of detention is also determined by the applicable IHL. Since the preventive internment of POW is expressly permitted under Article 21 Geneva III and the present circumstances are in accordance with IHL,¹¹⁴ the detainment is not arbitrary.

¹⁰⁶ ICRC (n 93), ¶¶1995, 1996.

¹⁰⁷ *ibid*, ¶¶1995-1996.

¹⁰⁸ Clar. SAF (n 52), ¶6.

¹⁰⁹ *ibid*, ¶5.

¹¹⁰ SAF (n 28), ¶49.

¹¹¹ *Diallo*, ¶68.

¹¹² *Hassan v. the United Kingdom*, ¶¶106-107.

¹¹³ Cf. A.III.2.b.

¹¹⁴ B.III.1.

C. Aglovale violated its Treaty obligations by unilateral imposing disproportionate and coercive sanctions against Ragnell and Ragnellian nationals, and must immediately withdraw those sanctions, releasing all Ragnellian property frozen and reinstating all assets seized pursuant to them, and compensate Ragnell for their impact.

I. Aglovale committed an internationally wrongful act by imposing sanctions against Ragnell.

As Aglovale's Parliament – a State organ¹¹⁵ – imposed the sanctions,¹¹⁶ they are attributable to Aglovale. They breach an international obligation (1.). The wrongfulness is not precluded (2.). This entails an obligation to reimburse Ragnell (3.).

1. Aglovale breached its international obligations by imposing sanctions on Ragnell.

a. Aglovale violated its obligations under Article 2(1) TTLP.

By imposing sanctions, Aglovale violated customary international law (aa.) and the UN-Charter (bb.).

aa. Aglovale violated the principle of nonintervention.

Nonintervention is “part and parcel of customary international law”.¹¹⁷ It bars from coercively intervening in another State's affairs.¹¹⁸

The sanctions must be seen as a unit: They are enacted as one, by and against the same actor, all based on the uniform reason and goal: To subdue Ragnell's efforts to defend their citizens' lives against UAC.¹¹⁹ Addressing each sanction individually would veil their impact's harshness, thus undermining the protection regime of nonintervention. Otherwise, States could artificially sever a sanction into singular parts: identical impact would then not prompt nonintervention.

The sanctions concern Ragnell's domestic affairs ((1.)). The interference was coercive ((2.)).

¹¹⁵ ILC, ‘ARSIWA with commentaries’ (n 59), 40.

¹¹⁶ SAF (n 28), ¶53.

¹¹⁷ *Nicaragua (Merits)*, ¶202.

¹¹⁸ *ibid*, ¶205.

¹¹⁹ SAF (n 28), ¶52.

(1.) The sanctions concern Ragnell's domestic affairs.

Domestic affairs are solely in the prerogative of States; not regulated by international law (*domaine réservé*).¹²⁰ It includes matters which fall in the State's jurisdiction.¹²¹ A sovereign State has jurisdiction over its citizens.¹²² Customary international law demonstrates the sovereign immunity of central banks' property.¹²³ Hence it is part of a State's *domaine réservé*.¹²⁴

The allocation of corporate entities to States depends on the location of their registered office.¹²⁵ Since the private banks are Ragnellian,¹²⁶ they are part of Ragnell's jurisdiction, even though they operate in Aglovale. They are part of Ragnell's *domaine réservé*. The same applies to Ragnell's central bank. Furthermore, it is part of Ragnell's *domaine réservé* to enact legislation concerning its nationals.

(2.) The measures are coercive.

Coercion is a means of exercising power to compel another State engaging in actions it would otherwise decline.¹²⁷ Economic measures can constitute coercion.¹²⁸ Criteria are almost exclusive trade

¹²⁰ *Nicaragua (Merits)*, ¶205; Kunig, 'Intervention, Prohibition of' in Peters (ed), *MPEPIL (Online)*, ¶¶3-4.

¹²¹ *Nationality Decrees in Tunis and Morocco (Great Britain v. France)*, PCIJ Series B, No 4, 6, 22.

¹²² Fassbender, 'Article 2 (1)' in Simma and others (eds), *The Charter of the United Nations (A Commentary)* vol 1, 57.

¹²³ U.S. Foreign Sovereign Immunities Act of 1976, Section 1611(b)(1); U.K. State Immunity Act 1978, Sections 13(4), 14(4); China Law on Judicial Immunity from Measures of Constraint for the Property of Foreign Central Banks 2005, Arts. 1, 2; Democratic Republic of the Congo and ors v FG Hemisphere Associates LLC, Hong Kong Court of Final appeal, FACV No 5, 6, and 7 of 2010, 147 I.L.R. 376, (2011); Belgium Act of 24 July 2008; France Code Monétaire et Financier, Article L. 153-1; Bundesgerichtshof, 4 July 2013, VII ZB 63/12, published in WM 2013, 1469; 18, 19(c), 21(1)(c) *United Nations Convention on Jurisdictional Immunities of States and their property*.

¹²⁴ Ronzitti, 'Sanctions as Instruments of Coercive Diplomacy: An International Law Perspective' in Ronzitti (ed), *Coercive Diplomacy, Sanctions and International Law*, 21.

¹²⁵ *Barcelona Traction*, ¶70.

¹²⁶ SAF (n 28), ¶53.

¹²⁷ Helal, 'On Coercion in International Law' [2019], SSRN Journal, 41.

¹²⁸ UNGA, 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations', (A/RES/2625(XXV)).

with one other State¹²⁹ and high prices for substitute imports due to an embargo.¹³⁰ Furthermore, the impairment of social aspects, including medical care, indicates an intent to change a State's behavior.¹³¹

Aglovale and Ragnell are each other's most important trading partners.¹³² Due to the embargo,¹³³ Ragnell was forced to substitute its imports. The procurement difficulties of Ragnellian hospitals result in a severe strain on the healthcare system.¹³⁴

Due to these effects, the sanctions suffice to overbear Ragnell's sovereign will regarding its policy in the Belt.

bb. In any case, Aglovale violated Article 2(1) UN-Charter.

The *raison d'être* of the nonintervention principle is protecting the sovereignty of States.¹³⁵ An infringement of the principle therefore amounts to a violation of Ragnell's State sovereignty.

b. Aglovale violated its obligations under Article 2(2) TTLP by violating the ICCPR.

aa. The ICCPR is applicable.

The protection of the ICCPR does not cease in times of war.¹³⁶

According to this Court in *Wall*, States are bound to comply with the ICCPR when they exercise jurisdiction outside their territory.¹³⁷ Since this is the case here,¹³⁸ the ICCPR applies extraterritorially.

¹²⁹ Jamnejad/Wood, 'The Principle of Non-intervention' (2009) 22(2), LJIL, 345, 371.

¹³⁰ UNGA, 'Economic Measures as a Means of Political and Economic Coercion against Developing Countries', (A/48/535), ¶12.

¹³¹ *ibid*, ¶14.

¹³² SAF (n 28), ¶4.

¹³³ *ibid*, ¶54, 55.

¹³⁴ *ibid*, ¶54.

¹³⁵ Kunig (n 119), ¶9.

¹³⁶ *Nuclear Weapons*, ¶25.

¹³⁷ *Wall Opinion*, ¶109.

¹³⁸ C.I.1.a.aa.(1).

bb. Aglovale violated Article 6(1) ICCPR by imposing sanctions on Ragnell.

A violation does not require the actual loss of life (yet), it suffices when it causes a life-threatening situation that might result in loss of life.¹³⁹ Deprivation of life is arbitrary if disproportionate and unpredictable.¹⁴⁰

The right to life is affected when economic sanctions threaten the supply of medicine and medical equipment.¹⁴¹ Multiple HRC resolutions emphasize the *disproportionate* human costs of unilateral sanctions and their effects on the targeted population.¹⁴² A pandemic has a significant impact on the health care system.¹⁴³ Sanctions alter a State's ability to fight COVID-19 all the more.¹⁴⁴

The sanctions resulted in hospitals being unable to restock vital needs.¹⁴⁵ The conduct happens during the COVID-19 pandemic.¹⁴⁶ Consequently, Ragnell is even more dependent on a functioning health care system. Hence, the sanctions cause a life-threatening situation possibly resulting in loss of lives. Those consequences are predictable, as they are typical for similar sanctions.¹⁴⁷

cc. Aglovale violated Article 17(1) ICCPR by seizing Prydwen Place.

It includes the right to be protected against arbitrary or unlawful interference with one's home. Ragnell is entitled to make claims in respect to Kay Ector ((1)). Aglovale interfered with Ector's right to privacy ((2)).

(1.) Ragnell is entitled to make claims in respect to Ector.

According to customary international law, a State can exercise diplomatic protection over its nationals to invoke another State's responsibility for violating their rights.¹⁴⁸ It requires the nationality of

¹³⁹ CCPR/C/GC/36 (n 67), ¶7.

¹⁴⁰ *ibid*, ¶12.

¹⁴¹ Khosravi/others, 'Examining unilateral economic sanctions from the perspective of international law: With an emphasis on human rights instruments' (2022) Vol. 6(3), JPSP, 2163, 2167.

¹⁴² E.g. UNGA, 'Human rights and unilateral coercive measures', (A/HRC/RES/27/21).

¹⁴³ UNHCR, 'Preventing and Mitigating indirect Health Impacts of COVID-19 on Displaced Populations in Humanitarian Settings', (July 2020).

¹⁴⁴ European Commission, 'Commission Guidance Note on the Provision of Humanitarian Aid to Fight the COVID-19 Pandemic in Certain Environments Subject to EU Restrictive Measures', 1.

¹⁴⁵ SAF (n 28), ¶54, 55.

¹⁴⁶ *ibid*, ¶29.

¹⁴⁷ E.g. *Alleged Violations of the 1955 Treaty of Amity, Economic Relations and Consular Rights (Islamic Republic of Iran v. United States of America)*, Memorial of Iran ¶¶3.117-3.123.

¹⁴⁸ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections, ICJ Rep 2007, 582, ¶39.

the claimant,¹⁴⁹ and the exhaustion of domestic remedies.¹⁵⁰ Ector is a Ragnellian national and exhausted all domestic remedies.¹⁵¹

(2.) Aglovale interfered with Ector’s Right to Privacy.

“Home” as referred to in Article 17(1) ICCPR is the place where a person resides.¹⁵² The ECtHR hinges the notion “home” on the condition of a *sufficient and continuous link* with a specific place.¹⁵³ This applies to secondary homes.¹⁵⁴ Occupation of property constitutes an interference.¹⁵⁵ Aglovale occupied Ector’s summer home,¹⁵⁶ violating Article 17(1) ICCPR.

c. Aglovale violated its obligations under Article 2(3) TTLP.

Since Aglovale and Ragnell are parties to the World Trade Organization (“WTO”),¹⁵⁷ Article 2(3) TTLP incorporates the General Agreement on Tariffs and Trade 1994 (“GATT”). This Court has jurisdiction to hear this claim (**aa.**). By imposing sectoral sanctions, Aglovale violated the GATT (**bb.**).

aa. This Court has jurisdiction to hear this claim.

The Dispute Settlement Understanding (“DSU”) does not provide an effective remedy. It only provides for voluntary compensation,¹⁵⁸ which Aglovale refuses.¹⁵⁹ The Appellate Body (“AB”) cannot hear new appeals due to a member shortage.¹⁶⁰ This undermines the DSU’s system as a viable judicial forum.

¹⁴⁹ *Panevezys-Saldutiskis Railway (Estonia v. Lithuania)*, PCIJ Series A/B, No 76, 5, 16.

¹⁵⁰ *Interhandel Case (Switzerland v. United States of America)*, *Preliminary Objections*, ICJ Rep 1959, 6, 27.

¹⁵¹ SAF (n 28), ¶57; Clar. SAF (n 52), ¶10.

¹⁵² HRC, ‘General Comment No. 16’, (HRI/GEN/1/Rev.9(Vol. I), 191), ¶5.

¹⁵³ *Winterstein and Others v. France*, ¶141.

¹⁵⁴ *Demades v. Turkey*, ¶32-34.

¹⁵⁵ *Khamidov v. Russia*, ¶138.

¹⁵⁶ SAF (n 28), ¶57.

¹⁵⁷ *ibid*, ¶64.

¹⁵⁸ 1869, UNTS, 401, Article 22.

¹⁵⁹ SAF (n 28), ¶65.

¹⁶⁰ Zaccaria, ‘You’re Fired! International Courts, Re-contracting, and the WTO Appellate Body during the Trump Presidency’ (2022) 13(3), *Global policy*, 322, 322.

In any case, when the jurisdiction of two independent tribunals extends to the same dispute, no rule of international law prevents them from exercising their jurisdiction.¹⁶¹ Sense and purpose of the DSU are strengthening the legal certainty of trade relations.¹⁶² This does not require its exclusive competence.¹⁶³

bb. Aglovale violated the GATT.

(1.) The sectoral sanctions violate Article 1(1) GATT.

Article 1(1) GATT prohibits measure conferring an advantage to some but not all member States.¹⁶⁴ The sectoral sanctions are directed against all goods from and to Ragnell's industrial, aviation, transportation, and security sectors.¹⁶⁵ This imposes an advantage to all other member States in comparison to Ragnell.

(2.) The sectoral sanctions violate Article 11(1) GATT.

Article 11(1) GATT covers restrictions limiting the quantity of a product being imported or exported.¹⁶⁶ The sectoral sanctions restrict the import and export of specific goods from and to Ragnell,¹⁶⁷ which limits their quantity.

(3.) Article 21(b)(iii) GATT does not justify the measures.

The security exception must be interpreted in the light of basic principles of international law.¹⁶⁸ It should be regarded as providing a party subject to an aggression with a right to self-defense.¹⁶⁹ Thus, "in war or other emergency in international relations" means war or emergency between the target and the targeting State. This is confirmed in *Russia – Traffic in Transit* where sanctions were imposed *inter partes* to the armed conflict.¹⁷⁰

Thus, Aglovale, not being Party to the armed conflict, is not justified.

¹⁶¹ *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ¶84.

¹⁶² *United States - Sections 301-310 of the Trade Act of 1974*, ¶7.75–7.91.

¹⁶³ Marceau, 'Conflicts of Norms and Conflicts of Jurisdictions The Relationship between the WTO Agreement and MEAs and other Treaties' (2001) 35(Issue 6), TRAD, 1081, 1111.

¹⁶⁴ *European Communities - Regime for the Importation, Sale and Distribution of Bananas*, ¶7.239.

¹⁶⁵ SAF (n 28), ¶53.

¹⁶⁶ *China - Measures Related to the Exportation of Various Raw Materials*, 319, 320.

¹⁶⁷ SAF (n 28), ¶53.

¹⁶⁸ *United States - Trade Measures Affecting Nicaragua*, ¶5.2.

¹⁶⁹ *ibid.*

¹⁷⁰ *Russia - Measures Concerning Traffic in Transit*, ¶3.1.–3.2, 7.122.

2. The wrongfulness of the measures is not precluded according to Article 21 ARSIWA.

Ragnell did not commit an internationally wrongful act.¹⁷¹ The asset, travel, and banking sanctions do not qualify as countermeasures (a.). In any case, the right to adopt countermeasures did not lie with Aglovale (b.). In any case, the sanctions were disproportionate. (c.)

a. The asset, travel, and banking sanctions do not qualify as countermeasures.

Countermeasures have to be directed against a *State*,¹⁷² thus against organs whose actions are attributable to the responsible State in the sense of part one, chapter two ARSIWA.¹⁷³ This is logical since other persons' actions cannot breach legal obligations and therefore cannot cease that breach as a reaction to the imposed countermeasures.

Neither all people engaged in attempts to circumvent the sanctions¹⁷⁴ nor private banks¹⁷⁵ fall under these provisions. Hence, the unlawfulness of the sanctions cannot be precluded as countermeasures, as they are directed against non-state actors.

b. Aglovale is not entitled imposing countermeasures.

Even if Ragnell did breach its obligations under the TTLP, they are not owed to Aglovale individually according to Article 42(a) ARSIWA.

Furthermore, Aglovale is not specially affected by any alleged *erga omnes* obligation according to Article 42(b)(i) ARSIWA (aa.). In any case, Aglovale cannot impose countermeasures until Balan waives its privilege (bb.).

aa. Aglovale is not specially affected.

A State is "specially affected" if it is affected in a way that distinguishes it from all other States to which the obligation is owed.¹⁷⁶ A typical situation is an act of aggression,¹⁷⁷ in which case the victim of the aggression is "specially affected".

¹⁷¹ A.IV.

¹⁷² *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, ICJ Rep 1997, 7, ¶55, ("*Gabčíkovo-Nagymaros*").

¹⁷³ Crawford, *The International Law Commission's articles on State Responsibility*, 91.

¹⁷⁴ SAF (n 28), ¶53(a)(b).

¹⁷⁵ *ibid*, ¶53(c).

¹⁷⁶ Crawford (n 172), 259.

¹⁷⁷ *Barcelona Traction*, 32.

Aglovale bases the imposition of sanctions on alleged violations of IHL.¹⁷⁸ The alleged use of force¹⁷⁹ is limited to the Belt, Balani territory;¹⁸⁰ the fighters imprisoned are Balani nationals.¹⁸¹ This does not specially affect Aglovale but Balan.

bb. In any case, Aglovale cannot impose countermeasures until Balan waives it privilege.

If a State alleges a violation of an *erga omnes* obligation, enforcement via this Court is barred until the State with the special interest waives its privilege.¹⁸² Since bringing a case before this Court is a form of invoking another State's responsibility in the sense of Article 42 ARSIWA,¹⁸³ the same must apply *a minori ad maius* to countermeasures in the form of sanctions.

Balan is an injured State. Hence, it is Balan's right to dispose of the right to impose countermeasures. As long as Balan does not decide against it, Aglovale cannot impose any countermeasures.

cc. Aglovale cannot invoke responsibility according to Articles 54, 48(1) ARSIWA.

The ILC intended to explicitly avoid implementing the right of non-injured States to impose countermeasures.¹⁸⁴ Article 54 was meant to be a saving clause that leaves resolution of the matter to the further development of international law.¹⁸⁵ There is no custom regarding the legality of imposing sanctions as countermeasures. The infliction of sanctions is dominated by States of the global north.¹⁸⁶ The targets of those sanctions do not approve of it,¹⁸⁷ and their interests are "specially affected"¹⁸⁸ as well. Hence, there is no custom.

¹⁷⁸ SAF (n 28), ¶52.

¹⁷⁹ A.III.1.a.

¹⁸⁰ Art. 11(1) TTLP.

¹⁸¹ SAF (n 28), ¶13, 36.

¹⁸² A.II.

¹⁸³ ILC, 'ARSIWA with commentaries' (n 59), 117.

¹⁸⁴ *ibid*, 139.

¹⁸⁵ *ibid*.

¹⁸⁶ E.g. US – Uganda, Uganda Embargo Act, 22 USC 2151 (1978); EU/US – Belarus, EU Council Decision 2010/639/CFSP (25 October 2010); EU – Russia, EU Council Decision 2014/512/CFSP (31 July 2014).

¹⁸⁷ AALCO, 'Unilateral and Secondary Sanctions: An International Law Perspective', .

¹⁸⁸ *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, ICJ Rep 1969, 3, ¶73.

In any case, the countermeasures are unproportionate.

This Court previously ordered sanctioning States to make humanitarian exceptions from sanctions to prevent irreparable injury.¹⁸⁹ The Security Council emphasized that asset and fund freezes cannot be imposed without exceptions for basic expenses.¹⁹⁰

The sanctions legislation does not provide humanitarian exceptions.

3. Aglovale must reimburse Ragnell.

A continuing breach of an international obligation entails its cessation.¹⁹¹

Furthermore, there is a duty to make full reparation for a resulting injury.¹⁹² Reparation includes restitution and compensation,¹⁹³ and requires a “sufficient causal nexus” between breach and injury.¹⁹⁴

Restitution demands re-establishing the situation prior to the wrongful act,¹⁹⁵ for instance, returning seized property.¹⁹⁶ Compensation is required for damage that cannot be made good by restitution.¹⁹⁷

It includes damage suffered by nationals on whose behalf the State claims within the framework of diplomatic protection.¹⁹⁸

Aglovale must withdraw the sanctions legislation. The sanctions legislation was the *conditio sine qua non* for the injuries. Aglovale must release property and reinstate assets.

Since it is impossible to restore Ragnell’s economic situation prior to the sanctions, Aglovale owes compensation. Aglovale must compensate Ector for his losses.

¹⁸⁹ *Alleged Violations of the 1955 Treaty of Amity, Economic Relations and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures*, ICJ Rep 2018, 623, ¶95.

¹⁹⁰ UNSC, ‘Resolution 1452’, (S/Res/1452), ¶1(a).

¹⁹¹ *Tehran Hostages*, ¶95; *Nicaragua (Merits)*, ¶292.

¹⁹² *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Compensation*, ICJ Rep 2018, 15, ¶29; *Gabčíkovo-Nagymaros*, ¶150.

¹⁹³ ILC, ‘ARSIWA with commentaries’ (n 59), Article 34.

¹⁹⁴ *Gabčíkovo-Nagymaros*, ¶34.

¹⁹⁵ *The Factory at Chorzów (Germany v. Poland)*, *Claim for Indemnity, Merits*, Series A, No 17, 5, 47, (“*Factory at Chorzów*”).

¹⁹⁶ *Temple of Preah Vihear (Cambodia v. Thailand)*, *Merits*, ICJ Rep 1962, 6, 36, 37.

¹⁹⁷ *Factory at Chorzów*, 47, 48.

¹⁹⁸ ILC, ‘ARSIWA with commentaries’ (n 59), 99.

D. Aglovale violated the Treaty by refusing to cooperate in good faith in the management of the plastic waste, whereas Ragnell complied with its obligations under the Treaty when it was forced by that refusal to export the waste to Etna for processing and disposal.

I. By refusing to cooperate, Aglovale violated its obligations from Article 28 TTLP.

By refusing to cooperate, Aglovale violated its obligations to protect the environment (1.) and human health (2.). Aglovale was not justified (3.).

1. By refusing to cooperate in good faith, Aglovale violated its obligation to prevent environmental pollution.

The duty to cooperate implies a duty to negotiate in good faith.¹⁹⁹ Even though there is no obligation to come to an agreement,²⁰⁰ interrupting communications or causing unjustified delays constitutes bad faith.²⁰¹ *Bona fides* is about legitimate expectations of the parties.²⁰² Considering the TTLP's overall context, the Parties aimed at preventing consequences that arose from the "Clarent War". Hence, they agreed to take "whatever steps [...] necessary".²⁰³ Since the environmental consequences after the "Clarent War" lasted for more than 30 years,²⁰⁴ it is a superior duty to prevent similar effects. Aglovale only agreed to negotiate with Ragnell after obstinate persistence.²⁰⁵ They cancelled negotiations before coming to an agreement.²⁰⁶ Without Ragnell's damage control by shipping the waste to Etna, Aglovale's refusal to cooperate would have led to an environmental crisis.²⁰⁷ Aglovale did not take whatever steps necessary and reasonable requested by Ragnell by refusing to cooperate. Hence, Aglovale violated Article 28 TTLP.

¹⁹⁹ *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America)*, ICJ Rep 1984, 246, ¶87.

²⁰⁰ *Railway Traffic between Lithuania and Poland*, Series A/B, No 42, 108, 116.

²⁰¹ *Lake Lanoux Arbitration (France v. Spain)*, 24 ILR 101, 23.

²⁰² Kotzur, 'Good Faith (Bona Fide)', *Peters (ed.) – MPEPIL*, ¶26.

²⁰³ TTLP, Article 28.

²⁰⁴ SAF (n 28), ¶14.

²⁰⁵ *ibid*, ¶39.

²⁰⁶ *ibid*, ¶43.

²⁰⁷ *ibid*, ¶38.

2. By refusing to cooperate, Aglovale violated its obligation to protect the human health within and surrounding the Gais Peninsula.

Environment and human health cannot be considered separately.²⁰⁸ Article 28 TTLP must be interpreted in the context of the TTLP.²⁰⁹ It includes applicable human rights obligations: The ICCPR and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). The right to life arising from Article 6 ICCPR,²¹⁰ and the right to the highest attainable standard of health, arising from Article 12 ICESCR have an environmental scope.²¹¹ Ragnell and Aglovale committed to protect the environment and human health within and surrounding the Gais Peninsula.²¹²

Aglovale’s refusal to cooperate constitutes bad faith.²¹³ The waste accumulated in the Belt is contaminated with *Clostridioides difficile* and *Staphylococcus aureus*,²¹⁴ which are known to cause diseases.²¹⁵ Letting it accumulate would have led to an environment and health crisis.²¹⁶

Aglovale owned the only waste processing facility left on the peninsula.²¹⁷ By refusing to take the waste, Aglovale willingly violated its obligations arising from Article 6(1) ICCPR and Article 12(1) ICESCR.

3. The refusal to cooperate is not justified as a countermeasure.

Conditioning cooperation on a complete halt of Ragnell’s military activities in the Belt²¹⁸ cannot be justified as a countermeasure. Ragnell did not breach any international obligations.²¹⁹ Aglovale is not an injured State.²²⁰

²⁰⁸ CCPR/C/GC/36 (n 67), ¶62.

²⁰⁹ VCLT, Article 31.

²¹⁰ CCPR/C/GC/36 (n 67), ¶16.

²¹¹ ECOSOC, ‘General Comment No. 14’, (E/C.12/2000/4), ¶4.

²¹² TTLP, Article 28.

²¹³ D.I.1.

²¹⁴ SAF (n 28), ¶38.

²¹⁵ Diekema/Pfaller, ‘Survey of Infections due to Staphylococcus Species’ [2001], Clin Infect Dis, 114-32; Guery/Galperine/Barbut, ‘Clostridioides Difficile: Diagnosis and Treatments’ [2019], BMJ, 366-385.

²¹⁶ SAF (n 28), ¶38.

²¹⁷ *ibid*, ¶39.

²¹⁸ *ibid*, ¶43.

²¹⁹ A.IV.

²²⁰ C.I.2.b.

In any case, the countermeasure is neither proportionate,²²¹ nor reversible.²²²

Countermeasures must be proportionate concerning their type and intensity.²²³ The gravity of the internationally wrongful act and the rights in question must be considered.²²⁴

The Plastics Conglomerate's waste treatment plant was rendered inoperative on 15 November 2021.²²⁵ Between then and 12 December 2021, when Aglovale finally accepted Ragnell's negotiation request, contaminated plastic waste already accumulated in Tintagel Park.²²⁶ This effect is not reversible.

By leaving the waste in Tintagel Park – as would have been the consequence if Ragnell did not ship it to Etna – Aglovale put the environment and health of all people living in and around the Gais Peninsula at risk. This threatened significant more lives as any of Ragnell's conduct in the Belt could.

II. Ragnell complied with its Treaty obligations by exporting waste to Etna.

Ragnell did not violate Article 28 TTLP (1). In any case, the wrongfulness is precluded due to a state of necessity (2).

1. Ragnell did not violate Article 28 TTLP.

By shipping the waste to Etna, Ragnell neither violated its obligation to prevent environmental pollution and harm (a), nor to protect human health (b).

a. Ragnell did not violate its obligation to prevent environmental pollution and harm.

Ragnell complied with its procedural obligations (aa.). In any case, there was no substantive harm (bb.).

²²¹ ILC, 'ARSIWA with commentaries' (n 59), 134.

²²² *Gabčíkovo-Nagymaros*, ¶84.

²²³ Crawford (n 11), 698.

²²⁴ ILC, 'ARSIWA with commentaries' (n 59), 135.

²²⁵ SAF (n 28), ¶37.

²²⁶ *ibid.*, ¶38, 39.

aa. Ragnell complied with its procedural obligations.

(1.) There is no Precautionary Principle.

The Precautionary Principle is not binding; its formulations and application are inconsistent. International courts and tribunals did not explicitly accept the principle as custom.²²⁷ This Court does not apply it.²²⁸

(2.) Not conducting an EIA was rightful.

There is a procedural customary obligation to conduct an Environmental Impact Assessment (“EIA”).²²⁹ However, Ragnell was unable to. The content of an EIA is assessed under the circumstances of each case.²³⁰ Considering these circumstances, not conducting an EIA was rightful.

Firstly, Ragnell was preoccupied with protecting its citizens in the Belt. Thus, Ragnell could not conduct a full-scale assessment due to time running short and UAC fighters targeting Ragnellians.

Secondly, even if Ragnell executed an EIA, this would only have triggered the obligation to notify potentially affected States.²³¹ Concerning the cooperation requirement, Ragnell even exceeded its obligations: They signed a bilateral agreement, in which Etna committed to dispose of the waste according to the Basel and Stockholm Convention.²³² Even though Ragnell is not a party to those Conventions,²³³ it acted in conformity with Article 11 Basel Convention and notified the Convention’s Secretariat.²³⁴

Hence, Ragnell complied with the obligations a potential EIA confirming a transboundary harm, would have triggered.

bb. In any case, there was no substantive harm.

The shipping itself did not cause any transboundary harm. It is not proven that Etna’s waste disposal caused a substantial risk ((1)). In any case, Ragnell exercised its due diligence ((2)).

²²⁷ Schröder, ‘Precautionary Approach/Principle’ in Peters (ed), *MPEPIL (Online)*, ¶20.

²²⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, ICJ Rep 2010, 14, ¶265, (“*Pulp Mills*”).

²²⁹ Epiney, ‘Environmental Impact Assessment’ in Peters (ed), *MPEPIL (Online)*, ¶47.

²³⁰ *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, ICJ Rep 2015, 665, ¶104.

²³¹ *ibid.*

²³² SAF (n 28), ¶44.

²³³ *ibid.*, ¶18, 19.

²³⁴ *ibid.*, ¶44.

(1.) There is no evidence of a substantial risk.

This Court treats documents that originate from a single source cautiously, especially if they are not corroborated by other documents.²³⁵ The weight given to documents must not only be assessed by independence of their author, but by the characteristics of the report itself.²³⁶ This includes its accuracy and clarity.²³⁷

The only indication for an environmental harm comes from the International Landfill Solutions Alliance's ("ILSA") reports concerning Etna's waste disposal.²³⁸ ILSA is an independent not-for-profit with great expertise.²³⁹ However, there are no other indications unsound waste disposal happened.²⁴⁰ Etna denies this.²⁴¹ The reports are extremely unspecific; they do not state quantities or where and when the alleged conduct happened.²⁴² The data provided is not accurate. Hence, there is no sufficient evidence of a substantial risk.

(2.) Alternatively, Ragnell exercised its due diligence.

Even if a State is responsible for transboundary harm,²⁴³ this is excused by a State's adequate due diligence; a State is not required to guarantee there will be no damage in all situations.²⁴⁴

Ragnell cooperated with Etna, entered into bilateral negotiations and assured the transfer complied with international law.²⁴⁵ Ragnell evaluated the risks of leaving the waste in Tintagel Park and shipping it to Etna.²⁴⁶ The fact that Etna is party to the Basel and Stockholm Conventions and committed to dispose of the waste in an environmentally sound manner according to those treaties indicates that Ragnell did take its due diligence seriously.²⁴⁷ Article 11 Basel Convention, according to which the

²³⁵ *Armed Activities*, ¶61.

²³⁶ *Pulp Mills*, ¶166.

²³⁷ *ibid.*

²³⁸ SAF (n 28), ¶45.

²³⁹ *ibid.*

²⁴⁰ *ibid.*

²⁴¹ *ibid.*

²⁴² *ibid.*

²⁴³ *Trail smelter case (United States v. Canada)*, RIAA III, 1905; *Pulp Mills*"

²⁴⁴ ILC, 'Second report on international liability for injurious consequences arising out of acts not prohibited by International law', (A/CN.4/402, YILC 1986, vol II, Part One), 146, 147.

²⁴⁵ SAF (n 28), ¶44.

²⁴⁶ *ibid.*, ¶38.

²⁴⁷ *ibid.*, ¶44.

bilateral agreement was signed, states that such agreements must be compatible with the environmentally sound management of hazardous waste. Hence, Ragnell could assume that Etna would not violate its obligations under the Basel Convention and dispose of the waste environmentally responsible.

b. Ragnell did not violate the right to life.

Article 6(1) ICCPR includes a prohibition against arbitrary deprivation of life. Furthermore, States must adopt measures to protect life from all foreseeable threats.²⁴⁸

The shipment itself did not threaten any lives. There is no evidence that any lives were threatened due to Etna's waste disposal.²⁴⁹ Even if this was the case, Ragnell ensured that Etna would dispose of the waste responsibly and in conformity with its treaty obligations.²⁵⁰ On the contrary, letting the waste accumulate in Tintagel Park would have led to an environment and health crisis.²⁵¹ Due to Aglovale's refusal to cooperate, there was no other option to protect the environment and people within and surrounding the peninsula as shipping the waste to Etna.

In doing so, Ragnell did not threaten the lives of anyone but rather complied with its duty to protect life.

2. In any case, the wrongfulness is precluded due to a state of necessity.

The state of necessity is a customary rule²⁵² and has previously been invoked to protect the environment.²⁵³ It cannot be invoked unless the act in question is a State's only possibility to protect an essential interest from a grave and imminent peril.²⁵⁴

a. The shipment was the only way for Ragnell to protect an essential interest against a grave and imminent peril.

²⁴⁸ CCPR/C/GC/36 (n 67), ¶18.

²⁴⁹ D.II.1.a.bb.(1).

²⁵⁰ D.II.1.a.

²⁵¹ SAF (n 28), ¶38.

²⁵² *Gabčíkovo-Nagymaros*, ¶51; *Wall Opinion*, ¶140.

²⁵³ *Fisheries Jurisdiction (Spain v. Canada)*, ICJ Rep 1998, 432-469.

²⁵⁴ *Gabčíkovo-Nagymaros*, ¶51, 52.

Leaving the waste in Tintagel Park would trigger an “unprecedented regional environmental and public health calamity”.²⁵⁵ This constitutes a grave and imminent peril, which is objectively established and proximate.²⁵⁶ It threatens the environment and public health within and surrounding the Gais Peninsula, which is an essential interest of at least three States their citizens, including Ragnell. Should Ragnell comply with Aglovale’s proposal,²⁵⁷ it would put a target on the back of its own citizens in the Belt.

Since Aglovale, having the only other waste treatment facility, refuses to take the waste,²⁵⁸ shipping it to Etna was the only way to protect the environment and people on the peninsula.

b. The shipping does not seriously impair an essential interest of Aglovale, or of the international community as a whole.

Protecting its interests by shipping the waste to Etna outweighs all other considerations, not only from Ragnell’s point of view, but also of competing individual and collective interests.²⁵⁹ The interests concerned here are environmental protection and human health. Consequently, it must be assessed which scenario contains the bigger risk – letting the waste accumulate in Tintagel Park or shipping it to Etna.

It is not proven that Etna disposed of the waste environmentally unsound.²⁶⁰ Even if this was the case, this emerged only from an *ex post* perspective.²⁶¹ Ragnell had no reason to suspect this before signing the agreement with Etna.²⁶² What happened after the shipment ended, was out of Ragnell’s responsibility.

However, it is apparent that Ragnell’s waste treatment plant is inoperative for at least eight months.²⁶³ Aglovale refused to take the waste.²⁶⁴ Leaving the contaminated waste in Tintagel Park would lead

²⁵⁵ SAF (n 28), ¶38.

²⁵⁶ ILC, ‘ARSIWA with commentaries’ (n 59), 83.

²⁵⁷ SAF (n 28), ¶43.

²⁵⁸ *ibid.*

²⁵⁹ *Gabčíkovo-Nagymaros*, ¶33.

²⁶⁰ D.II.1.a.bb.(1).

²⁶¹ SAF (n 28), ¶44, 45.

²⁶² *ibid.*, ¶44.

²⁶³ *ibid.*, ¶37.

²⁶⁴ *ibid.*, ¶43.

to a regional environment and health crisis.²⁶⁵ The environmental cleanup after the “Clarent War” took 30 years.²⁶⁶

In conclusion, shipping the waste to Etna held the lowest risk. Even though there still might have been a lower risk to the environment and human health, Ragnell did everything they could to minimize it as much as possible.

²⁶⁵ *ibid*, ¶38.

²⁶⁶ *ibid*, ¶14.

PRAYER FOR RELIEF

The State of Ragnell respectfully requests this honorable Court to adjudge and declare that:

- A.** The initiation of “Operation Shining Star” and the targeting of Nant Gateway and Compound Ardan were in conformity with the Treaty, and do not give rise to any obligations.

- B.** Ragnell acted in accordance with the Treaty in temporarily employing UAC detainees in the transport of plastic waste to Etna, and in temporarily transferring them to Camlann.

- C.** Aglovale violated its Treaty obligations by unilaterally imposing disproportionate and coercive sanctions against Ragnell and Ragnellian nationals, and must immediately withdraw those sanctions, releasing all Ragnellian property frozen and reinstalling all assets seized pursuant to them, and compensate Ragnell for their impact.

- D.** Aglovale violated the Treaty by refusing to cooperate in good faith in the management of the plastic waste, whereas Ragnell complied with its obligations when it forced by that refusal to export the waste to Etna for processing and disposal.