

**TEAM 610A**

2023 PHILIP C. JESSUP INTERNATIONAL LAW

MOOT COURT COMPETITION

**COUR INTERNATIONALE DE JUSTICE**

**INTERNATIONAL COURT OF JUSTICE**



AT THE PEACE PALACE

THE HAGUE, NETHERLANDS

**CASE CONCERNING THE CLARENT BELT**

**THE KINGDOM OF AGLOVALE**

(APPLICANT)

v.

**THE STATE OF RAGNELL**

(RESPONDENT)

—  
AU PALAIS DE LA PAIX

LA HAYE, PAYS-BAS

**AFFAIRE CONCERNANT LA CEINTURE CLARENT**

**LE ROYAUME D'AGLOVALE**

(DEMANDEUR)

c.

**L'ÉTAT DE RAGNELL**

(DEFENDEUR)

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**MEMORIAL FOR THE APPLICANT**

**MÉMORIAL DU DEMANDEUR**

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## STATEMENT OF JURISDICTION

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The Kingdom of Aglovale (“Aglovale”) and the State of (“Ragnell”) appear before the International Court of Justice in accordance with Article 40(1) of the Statute of the International Court of Justice through submission of a Special Agreement for resolution of the differences between them concerning the Clarent Belt. Aglovale and Ragnell have referred the dispute to the Court, granting it jurisdiction under Article 36(1) of the Statute. The Parties concluded the Special Agreement in the Hague, the Netherlands, and jointly notified this Court of their Special Agreement on 30 August 2022.

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## QUESTIONS PRESENTED

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- I. *Whether* Ragnell's launching of "Operation Shining Star" and subsequent attacks on the Nant Gateway and Compound Ardan were consistent with the Trilateral Treaty and require compensation.
  
- II. *Whether* Ragnell's employment of UAC detainees in the transportation of hazardous waste and their transfer to and detention in Camlann Correctional Facility were consistent with the Trilateral Treaty.
  
- III. *Whether* Aglovale's imposition of unilateral sanctions against Ragnell and Ragnellian nationals was consistent with the Trilateral Treaty.
  
- IV. *Whether* Ragnell's transportation of hazardous plastic waste to Etna and Aglovale's conditioning cooperation on cessation of hostilities were consistent with the Trilateral Treaty.

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## STATEMENT OF FACTS

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### OVERVIEW OF THE PARTIES

The Kingdom of Aglovale (“Aglovale”), the Federation of Balan (“Balan”), and the State of Ragnell (“Ragnell”) are neighbouring States on the Gais Peninsula. Aglovale is landlocked, bordered by Balan to the north and east and by Ragnell to the south and west. Between Aglovale and the Dozmary Sea lies the Clarent Belt, containing the Tintagel Coast (“the Coast”). Historically, all recognised that the Clarent Belt belonged to Balan. In the early 20<sup>th</sup> century, Balan began developing the Tintagel Coast, cooperating with Aglovale to construct a port and the Eamont Thruway, a rail and road system connecting the Coast with the rest of the Peninsula. Tintagel Park (“the Park”), the Coast’s industrial centre, specialised in plastics and grew in importance.

### THE TRILATERAL TREATY

In 1951, an explosion in the Park was attributed by Balan to the Ragnellian secret service. Troop mobilisation at the border escalated into the Clarent War, causing significant loss of life and environmental damage. Ragnell eventually seized control of and occupied the Clarent Belt. With the intervention of Aglovale’s Queen Clarine, Ragnell and Balan negotiated a peace treaty—the Trilateral Treaty (“the Treaty”)—under which Balan retained sovereignty over the Clarent Belt, which was leased to Ragnell for 65 years. Under the Treaty, Ragnell was to maintain the peace and order of the Clarent Belt, and Aglovale was to monitor party compliance. The Treaty guaranteed Aglovale access to the seaport and the Eamont Thruway. While it was generally well-received, a group of Balani veterans known as the “Unityk Ai Chyvon” (“UAC”) organised against it in Balan.

The plastics industry continued to grow in the Coast, including many companies specialising in medical and healthcare equipment. A plastic waste processing plant was established in Tintagel Park. When COVID-19 reached the region in May 2020, plastics companies in the medical industry increased production. Aglovale subsidised the development of infrastructure in the region, including modernising the Nant Gateway, the only tunnel mouth from the rail and road network into the Belt.

## **THE LAUNCH OF OPERATION SHINING STAR**

In 2018, Dan Vortigern, a leader of the nationalist Ragnellian Progressive Party (“RPP”), was elected President of Ragnell. UAC members grew concerned that Ragnell would not withdraw from the Belt at the expiration of its lease. Following Vortigern’s election, the UAC carried out sporadic attacks on Ragnellian-owned factories. Balan acted to halt the attacks, arresting UAC members and conducting commercial vehicle checks in the Belt. Vortigern claimed that Balan’s alleged failure to halt attacks breached the Trilateral Treaty.

Notwithstanding Balan’s efforts, UAC attacks continued and, in the week of July 12, 2021, Ragnell launched “Operation Shining Star” by sending armed military vehicles into the Belt. Balan condemned the invasion and Aglovale withdrew its peacekeepers. At Aglovale’s request, the United Nations Security Council (“UNSC”) met to address Ragnell’s invasion of the Belt. Twelve states voted in favour of a resolution condemning the invasion, but it was vetoed. The conflict worsened. By September 2021, sustained conflict had broken out between Ragnell and the UAC, which carried out guerrilla warfare in the Belt.

## **RAGNELL’S ATTACKS ON THE NANT GATEWAY AND COMPOUND ARDAN**

On 20 December 2021, Balan ordered that all Balanis in Tintagel Park evacuate through the Eamont Thruway, which Balan declared a humanitarian corridor. Balan deployed military personnel to facilitate the evacuation. On 22 December 2021, the Defense Minister of Etna, an island state near the Peninsula and close ally of Ragnell, informed her Ragnellian counterpart that UAC fighters were traveling along the Thruway to launch a surprise attack on Ragnell’s forces. In response, Ragnell bombed the Nant Gateway, destroying it and preventing movement in or out of the Tintagel Coast. The bombing rendered impossible the evacuation of civilians from and the transport of humanitarian aid into the Coast.

In March 2022, Ragnell determined that Compound Ardan, a factory commandeered by the UAC, was being used to launch attacks. Ragnell relied upon a Balani informant with limited access to the Compound and a history of providing inaccurate and misleading intelligence to determine whether Warehouse 15 housed ammunition dumps. On 7 March, Ragnell bombed five buildings in the Compound, including Warehouse 15, wherein 76 civilians were hiding. The bombing killed 68 Balani women and children and eight Aglovalean aid workers.

## **THE CAPTURED FIGHTERS**

Ragnell captured over 400 UAC fighters and held them at Fort Caerleon, a makeshift detention center within the Belt. In January and February 2022, Ragnell ordered the captured fighters to load contaminated plastic waste that had accumulated since the destruction of the waste processing plants onto ships bound for Etna, giving them only basic safety gear.

On 21 March 2022, Ragnell removed the UAC detainees, now numbering almost 1,000, from the Clarent Belt, transported them to Ragnellian territory, and incarcerated them in Camlann Correctional Center, a maximum-security prison. Aglovale's Foreign Minister Laudine denounced the treatment of the prisoners as violations of the Geneva Convention and customary international law.

## **SANCTIONS**

On 23 April 2022, Aglovale sanctioned Ragnell, freezing the assets of Vortigern and other senior Ragnellian and RPP officials. Aglovale imposed asset seizures and travel bans on those attempting to circumvent the sanctions. Moreover, Aglovale froze the funds of Ragnellian banks operating in its territory and prohibited its nationals from entering into contracts with Ragnellian businesses. Several of Aglovale's allies followed suit. Ragnell's economy contracted sharply.

On 4 May 2022, Aglovale seized the summer home of Ragnellian RPP donor, Kay Ector, on the ground that he attempted to circumvent the sanctions. Denying the allegations, Ector sued in Aglovalean civil court. The trial court dismissed the suit, and the Supreme Court upheld this decision while confirming the constitutionality of the sanctions legislation.

## **THE HAZARDOUS WASTE**

On 15 November 2021, fighting between Ragnell and the UAC destroyed the Clarent Belt's main waste treatment plant. Plastic waste, including infectious materials, accumulated. Experts predicted that continued fighting in the Belt risked an unprecedented environmental and public health calamity. Ragnell requested that Aglovale accept the waste transfer, and negotiations began on 12 December 2021. Although unsuccessful, a second round of negotiations was scheduled for 27 December 2021.

On 26 December 2021, in response to Ragnell’s destruction of the Nant Gateway, Aglovale cancelled the second round of negotiations and conditioned their resumption on Ragnell halting its military activities in the Belt. On 20 January 2022, Ragnell signed a bilateral agreement with Etna to export all plastic waste for processing, apparently without any prior verification of Etna’s capabilities. Ragnell began shipments on 24 January 2022.

On 22 February 2022, the International Landfill Solutions Alliance (“ILSA”) publicly warned that Etna would have to resort to environmentally harmful waste disposal methods, contrary to Etna’s previous statement. Ragnell nonetheless continued shipments until 24 February 2022. While Etna denied the ILSA report, later unrebutted reports confirmed that Etna harmfully incinerated and dumped the waste into the ocean.

### **DIPLOMATIC NEGOTIATIONS**

In June and July 2022, Aglovale, Ragnell, and Balan attempted to negotiate a settlement of their disputes. The negotiations failed. On 13 July 2022, Ragnell filed an Application with the Registry of the Court commencing proceedings against Aglovale. Aglovale indicated its intention to file counterclaims. Both States invoked Article 41 of the Trilateral Treaty as the basis for the Court’s jurisdiction.

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## SUMMARY OF PLEADINGS

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### PRELIMINARY PLEADING

The *Monetary Gold* principle does not render Pleading I or IV inadmissible. Neither Balan nor Etna are essential third-parties for these proceedings, as their legal interests do not form the very subject-matter of the disputes.

### PLEADING I

Ragnell violated its obligations under the Trilateral Treaty in launching Operation Shining Star and in its attacks on the Nant Gateway and Compound Ardan. Ragnell violated its *jus ad bellum* obligations under the Treaty by sending armoured vehicles and military battalions into the Clarent Belt. Ragnell's violation cannot be justified by self-defence, because the acts of the UAC cannot be attributed to Balan and non-State actors cannot author an armed attack. Further, Ragnell's attack on the Nant Gateway violated the principles of distinction and proportionality, and the attack on Compound Ardan violated the precautionary principle. As a result, Ragnell is obligated to pay reparations for the death of Aglovalean nationals.

### PLEADING II

Ragnell violated *ergas omnes partes* obligations under the Treaty when it ordered the UAC fighters to transport contaminated plastic waste and detained them in Camlann Correctional Facility. Therefore, Aglovale has standing to bring these claims.

Ordering UAC detainees to transport the waste violated Article 2(2) of the Treaty, because such forced labour violates rules protecting prisoners of war ("POWs"). Even if the UAC detainees were not POWs, Ragnell violated rules concerning labour that apply during occupation and fundamental guarantees applicable in all armed conflicts.

Transferring the prisoners from the Clarent Belt to Ragnell and incarcerating them in a maximum-security prison violated international human rights and humanitarian law as set out in Article 2(2). Ragnell violated the prohibition against sending POWs to penitentiaries. Even if the detainees were not POWs, their transfer to Ragnell's own territory was unlawful. Furthermore, Ragnell failed to afford the required due process owed to the detainees under the Geneva Conventions and their First Additional Protocol. Finally, the arbitrary detention of the UAC

fighters violated Ragnell's human rights obligations under the Article 9 of the International Covenant on Civil and Political Rights ("ICCPR").

### **PLEADING III**

Aglovale's sanctions complied with the principle of non-intervention because they neither affected a subject matter that Ragnell was entitled to choose freely, nor were they unlawfully coercive. Further, Aglovale upheld its human rights obligations, which are not extraterritorial. Even if they were, Aglovale did not violate substantive rights under the International Covenant on Economic, Social and Cultural Rights ("ICESCR") or the ICCPR. Moreover, Aglovale's sanctions comported with its trade obligations, qualifying as an Article XXI national security exception under the General Agreement on Tariffs and Trade ("GATT"). Aglovale adopted the measures in good faith during an emergency in international relations to protect its essential security interests.

Aglovale also complied with its neutrality obligations, which do not encompass economic measures and only apply to Aglovale's peacekeeping and monitoring functions. Alternatively, Aglovale was permitted to derogate from its neutrality obligations under customary international law because Ragnell had committed aggression. Finally, there was insufficient causality linking Aglovale's actions and Ragnell's alleged injury, since its inflation, unemployment, and economic contraction could have arisen from multiple factors, including the harm that Ragnell's own aggression inflicted on its economy. Ragnell was therefore not entitled to compensation.

### **PLEADING IV**

Ragnell violated its obligation to comply with international environmental law under Article 28 of the Treaty when it exported hazardous waste to Etna. In particular, Ragnell violated customary international law obligations reflected in the Basel Convention ("Basel") and Stockholm Convention ("Stockholm"), when it failed to take any action to verify and ensure that Etna would provide environmentally sound management of waste and that Etna employed the best available techniques to minimise the release of pollutants from incineration. Ragnell also violated its customary due diligence obligations, given content by the Basel and Stockholm Conventions.

Aglovale complied with its environmental law obligations when it conditioned cooperation with Ragnell concerning the transport of waste on Ragnell ceasing its aggression in the Clarent Belt. Specifically, Aglovale discharged its duty to cooperate in good faith by negotiating with

Ragnell with a view toward reaching an agreement. Regardless, any failure to cooperate by Aglovale was justified as a lawful countermeasure undertaken in response to Ragnell's bombing of the Nant Gateway.

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PLEADINGS

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**0. THERE ARE NO ESSENTIAL THIRD-PARTIES BARRING ADMISSIBILITY UNDER *MONETARY GOLD*.**

Aglovale and Ragnell referred this dispute to the Court, granting it jurisdiction under Article 36(1) of the Statute of the International Court of Justice. This Court thus has discretion over the admissibility of each claim. Although the underlying facts of claims I and IV involve the actions of third-party States, Balan and Etna, this does not bar the admissibility of claims by Aglovale against Ragnell. Under *Monetary Gold*, a claim is only inadmissible when an absent third-party's legal interests form "the very subject-matter" of the decision.<sup>1</sup> Legal interests reach this level when the Court needs to determine the lawfulness of the third State's conduct "as a prerequisite" for the determination of the dispute.<sup>2</sup> Otherwise, the Court cannot decline to exercise its jurisdiction even if its finding "might well have implications for the legal situation of the other States concerned."<sup>3</sup>

Balan is not an essential third-party for the adjudication of the lawfulness of Ragnell's use of force. Although the military action took place on Balan's territory,<sup>4</sup> the justification for the use of force only requires an evaluation of the UAC's conduct, as they authored the armed attack.<sup>5</sup> Thus, the pleading can be adjudicated without implicating Balan's legal interests. Furthermore, the *Monetary Gold* principle cannot preclude adjudication of a dispute where affected third States can intervene or file separate lawsuits.<sup>6</sup> That is the case here, where Balan chose not to intervene and specifically reserved the right to bring a subsequent action against Ragnell, which it is entitled to do under Article 41 of the Treaty.<sup>7</sup>

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<sup>1</sup> *Monetary Gold Removed from Rome in 1943* (Italy v. France, U.K., & U.S.), Preliminary Question, 1954 I.C.J. 19, ¶32 [*"Monetary Gold"*]; See also *East Timor* (Portugal v Australia), 1995 I.C.J. 84, ¶28 [*"East Timor"*].

<sup>2</sup> *Certain Phosphate Lands in Nauru* (Nauru v. Australia), Preliminary Objections, 1992 I.C.J. 240, ¶55 [*"Certain Phosphates"*]; See also *Monetary Gold*, ¶28.; *East Timor*, ¶29.

<sup>3</sup> *Certain Phosphates*, ¶55.

<sup>4</sup> *Compromis*, ¶31.

<sup>5</sup> See *infra* §I.A.2.i.

<sup>6</sup> *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. U.S.), 1986 I.C.J. 14, ¶88 [*"Nicaragua"*].

<sup>7</sup> *Compromis*, ¶62; Trilateral Treaty of Lasting Peace, 1958, Art.41 [*"Treaty"*].

Etna is similarly not an essential third-party, as the subsequent treatment of waste exported by Ragnell<sup>8</sup> does not form the very subject-matter of pleading IV. Ragnell's due diligence obligations are one of conduct, not result.<sup>9</sup> Thus, determining whether Etna acted unlawfully when it disposed of the waste is not a prerequisite to determining whether Ragnell violated due diligence obligations when exporting said waste.

**I. RAGNELL VIOLATED ITS TREATY OBLIGATIONS IN LAUNCHING “OPERATION SHINING STAR” AND IN ITS ATTACKS ON BOTH NANT GATEWAY AND COMPOUND ARDAN, AND MUST PAY REPARATIONS TO AGLOVALE FOR THE DEATHS OF THE EIGHT AGLOVALEAN NATIONALS.**

Ragnell's military conduct in the Clarent Belt violated its obligations under the Treaty to comply with *jus ad bellum* [A] and *jus in bello* [B] rules. As a result, Ragnell is obligated to pay reparations to Aglovale [C].

**A. Ragnell violated *jus ad bellum* obligations under the Treaty by launching Operation Shining Star.**

The launching of Operation Shining Star violated Articles 2, 3, and 14 of the Treaty.<sup>10</sup> The Operation constituted use of force per Article 2(4) of the U.N. Charter [1]. Ragnell's actions cannot be justified by Article 51 of the U.N. Charter because they did not respond to an armed attack [2] and did not comply with the principle of necessity [3].

1. Launching Operation Shining Star violated Articles 2, 3, and 14 of the Treaty.

Articles 3 and 14 require the withdrawal of military forces and the ongoing demilitarisation of the Clarent Belt.<sup>11</sup> Article 2(1) stipulates the application of the U.N. Charter and customary

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<sup>8</sup> Compromis, ¶45.

<sup>9</sup> *Corfu Channel* (Great Britain v. Albania), 1949, I.C.J. 1, 22 [“*Corfu Channel*”]; *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), 2010 I.C.J. 135, ¶197 [“*Pulp Mills*”]; *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua), Separate Opinion of Judge Donoghue, 2015 I.C.J. 150, ¶9 [“*Certain Activities*”].

<sup>10</sup> Treaty, Arts.2, 3, 14.

<sup>11</sup> *Id.*, Arts.3, 14.

international law.<sup>12</sup> The prohibition on the use of force, as a customary *jus cogens* norm<sup>13</sup> emanating from the U.N. Charter<sup>14</sup> is incorporated into the Treaty.<sup>15</sup> The use of armed force by a State against the sovereignty of another State amounts to an act of aggression.<sup>16</sup> Under the Treaty's Article 3, Ragnell was obligated not to post military forces in the Clarent Belt, notwithstanding its status as a lessee.<sup>17</sup> When Ragnell violated the Treaty by sending armoured vehicles and military battalions into the Clarent Belt,<sup>18</sup> it lost its rights as a lessee and became an occupier.<sup>19</sup>

2. Ragnell's occupation cannot be justified by Article 51 of the U.N. Charter as an act of self-defence.

The right of self-defence, enshrined in Article 51 of the U.N. Charter<sup>20</sup> and deemed customary,<sup>21</sup> is triggered by an armed attack on a State.<sup>22</sup> Ragnell, however, did not suffer an armed attack because the UAC's acts cannot be attributed to Balan [i] and non-State actors cannot author armed attacks [ii].

i. *The conduct of the UAC cannot be attributed to Balan.*

Under Article 8 of the Articles on Responsibility of States for Internationally Wrongful Acts ("ARSIWA"),<sup>23</sup> conduct by non-State actors is only attributable to a State when undertaken by groups acting under its instruction, direction or control.<sup>24</sup> Attribution exists only where a State

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<sup>12</sup> *Id.*, Art.2(1).

<sup>13</sup> *Armed Activities on the Territory of the Congo* (D.R.C. v. Uganda), 2005 I.C.J. 116, ¶148 [**"Armed Activities"**]; *Nicaragua*, ¶¶187-190; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 131, ¶87 [**"Wall"**].

<sup>14</sup> Charter of the United Nations, 1945, 1 UNTS XVI, Art.2(4) [**"U.N. Charter"**].

<sup>15</sup> Treaty, Arts.2, 3, 20.

<sup>16</sup> Definition of Aggression, G.A. Res. 3314(XXIX), Art.1 (14 December 1974). *See also* *Armed Activities*, ¶165.

<sup>17</sup> Treaty, Arts.3, 14.

<sup>18</sup> *Compromis*, ¶31.

<sup>19</sup> MICHAEL STRAUSS, TERRITORIAL LEASING IN DIPLOMACY AND INTERNATIONAL LAW 113 (2015).

<sup>20</sup> U.N. Charter, Art.51.

<sup>21</sup> *Nicaragua*, ¶176.

<sup>22</sup> U.N. Charter, Art.51.

<sup>23</sup> International Law Commission [**"ILC"**], *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries, A/56/10, Art.8 (2001) [**"ARSIWA"**], applicable via Art.2 of the Treaty.

<sup>24</sup> ARSIWA, Art.8; *Nicaragua*, ¶109, ¶115.

exercises “effective control” over the non-state actor.<sup>25</sup> The acts of the UAC cannot be attributable to Balan, as the UAC was independently organised by veterans and students opposing Balan’s Treaty ratification.<sup>26</sup> Indeed, Balan acted to thwart their advancement, including having police raid UAC clubs, arresting members, and inspecting commercial vehicles entering the Belt.<sup>27</sup>

ii. *Non-State actors cannot author armed attacks.*

Given the UAC’s actions are unattributable to Balan, the UAC cannot independently author an armed attack. This Court has consistently rejected the claims of States attempting to justify their use of force against non-State actors as self-defence.<sup>28</sup> It is immaterial that Balan may have been unable or unwilling to halt UAC fighters,<sup>29</sup> as international law does not recognise the unable or unwilling theory as a circumstance precluding wrongfulness.<sup>30</sup> Notwithstanding the assertions of certain States since 11 September 2001,<sup>31</sup> this Court has maintained that Article 51 only recognises the right of self-defence “in the case of armed attack by one State against another State.”<sup>32</sup> Moreover, State practice rejects the notion that non-State actors can author armed attacks.<sup>33</sup> Even if the UAC could author an armed attack, Article 51 cannot be invoked for their military incursion against the territorial integrity of Balan.

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<sup>25</sup> *Nicaragua*, ¶109, ¶115, ¶195. The International Criminal Tribunal for the Former Yugoslavia (“ICTY”) applied an alternative “overall control” test in *Prosecutor v. Duško Tadić*, IT-94-1-T, Judgment, ICTY, ¶405 (1997) [“*Tadić*”]. However, this Court held that this is inapplicable for questions of state responsibility. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia & Herzegovina v. Serbia & Montenegro), 2007 I.C.J. 91, ¶402 [“*Genocide*”]. Regardless, the UAC’s actions are not attributable under either test.

<sup>26</sup> *Compromis*, ¶13, ¶22.

<sup>27</sup> *Compromis*, ¶26.

<sup>28</sup> *Wall*, ¶¶139-41; *Nicaragua*, ¶195; *Armed Activities*, ¶¶145-146.

<sup>29</sup> *Compromis*, ¶35.

<sup>30</sup> ARSIWA, Art.25(2).

<sup>31</sup> See Adil Ahmad Haque, *Self-defence against non-state actors: All over the Map*, JUST SECURITY (2021).

<sup>32</sup> *Wall*, ¶139.

<sup>33</sup> Dire Tladi, *The Use of Force in Self-Defence against Non-State Actors, Decline of Collective Security and the Rise of Unilateralism: Whither International Law?* in SELF-DEFENCE AGAINST NON-STATE ACTORS 88 (Anne Peters & Christian Marxsen eds., 2019)

iii. *Even if Ragnell's actions responded to an armed attack, they contravened the principle of necessity.*

Self-defence can only warrant measures proportional to the armed attack and necessary to respond to it.<sup>34</sup> In *Oil Platforms*, this Court found insufficient evidence of Iranian military presence on the platforms to prove the US attacks were necessary.<sup>35</sup> Similarly, there is insufficient evidence that the UAC fighters posed a threat severe enough to constitute military presence, as the UAC's raids and factory incidents are comparable to domestic terrorism<sup>36</sup> combatable with police enforcement.<sup>37</sup>

**B. Ragnell violated *jus in bello* obligations under the Treaty when attacking the Nant Gateway and Compound Ardan.**

Article 2(3) of the Treaty requires all parties to adhere to all applicable *jus in bello* principles and take all necessary measures to prevent violations.<sup>38</sup> Because Ragnell was party to an international armed conflict [1], the rules of the Geneva Conventions, First Additional Protocol ("API"), and custom apply. Ragnell violated the principles of distinction and proportionality in its attack on Nant Gateway [2] and did not take proper precautionary measures before bombing Compound Ardan [3].

1. Ragnell was party to an international armed conflict.

Ragnell was a party to an international armed conflict because it engaged in military combat on another State's territory.<sup>39</sup> International tribunals have consistently held that any dispute involving two or more States in which there is a resort to armed force is an international armed

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<sup>34</sup> *Nicaragua*, ¶176.

<sup>35</sup> *Oil Platforms* (Iran v. U.S.), 2003 I.C.J. 90, ¶76 [*"Oil Platforms"*].

<sup>36</sup> *Compromis*, ¶30, ¶26.

<sup>37</sup> *See, e.g.*, U.K. Prime Minister, Statement following London terror attack (June 2017) (addressing the police response to domestic terrorist attacks by ISIS).

<sup>38</sup> Treaty, Art.2(2).

<sup>39</sup> For the definition of an armed conflict, *see* Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, 75 U.N.T.S. 287, Art.2 [*"GCIV"*].

conflict.<sup>40</sup> Thus, the moment Ragnell launched a military campaign in the Clarent Belt, *jus in bello* rules for an international armed conflict applied to their conduct.<sup>41</sup>

Ragnell cannot mischaracterise the conflict as a non-international armed conflict because the UAC assumed the rights and obligations of a High Contracting Party with its declaration under Article 96 of the API.<sup>42</sup> When the designated depositary of the API accepted the UAC's declaration,<sup>43</sup> it confirmed that the rules applicable to an international armed conflict legally bound both Ragnell and the UAC forces.<sup>44</sup> Moreover, mischaracterising the conflict as non-international would not change the outcome, as the principles of distinction and proportionality are customary for all armed conflicts.<sup>45</sup>

2. Ragnell violated the principle of distinction in its attack on the Nant Gateway.

The principle of distinction requires that an attack be limited strictly to military objects,<sup>46</sup> that is, objects which based on their nature, location, purpose or use, make an effective military contribution.<sup>47</sup> Dual-use objects like bridges require careful proportionality analysis.<sup>48</sup>

A disproportionate attack, one which may be expected to result in excessive damage to civilian objects relative to the concrete and direct military advantage anticipated, is

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<sup>40</sup> *Prosecutor v. Duško Tadić*, Interlocutory Appeal on Jurisdiction, IT-94-1-A, ICTY, ¶70, (1995); *Prosecutor v. Mucić et al.*, IT-96-21-T, ICTY, ¶183 (1998).

<sup>41</sup> *Prosecutor v. Haradinaj et al.*, ICTY, IT-04-84bis-T, ¶1100 (2008); Marko Milanovic, *End of application of international humanitarian law*, 96 INT'L REV. OF THE RED CROSS 179 (2014).

<sup>42</sup> Clarifications, ¶7.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Legality of the Threat of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 95, ¶75 [**“Nuclear Weapons”**]; Jean-Marie Henckaerts & Louise Doswald, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. I: RULES xvi (2005) [**“ICRC Customary Rules”**].

<sup>46</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, 1977, 1125 U.N.T.S. 3, Art.52(2) [**“API”**].

<sup>47</sup> *Id.*

<sup>48</sup> *Prosecutor v. Galić*, IT98-29-T, ICTY, ¶58 (2003); Stefan Oeter, *Methods and Means of Combat*, in THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 119, 186 (Dieter Fleck ed., 2009); William J. Fenrick, *Attacking the Enemy Civilian as a Punishable Offense*, 8 DUKE J. COMP. & INT'L. L. 539, 548 (1997).

indiscriminate.<sup>49</sup> The Nant Gateway, the only tunnel mouth connecting the Belt and Port to Aglovale and central Balan,<sup>50</sup> was declared a “humanitarian corridor”<sup>51</sup> and used to convoy medical vehicles and transport civilians fleeing the Belt. Ragnell may have deemed the operation necessary to stop usage of the Thruway by UAC fighters.<sup>52</sup> However, given Ragnell’s purported military aims of “saving lives”<sup>53</sup> and the civilians left stranded in the combat zone and vulnerable to fatal attack because of the Gateway strike,<sup>54</sup> the expected military advantage of destroying use of the Gateway was outweighed by expected damage to civilian objects. The significant humanitarian consequences were disproportionate to the direct military advantage and thus Ragnell’s actions constituted an indiscriminate attack.

3. Ragnell did not take precautionary measures prior to bombing Compound Ardan.

While Compound Ardan was a military object,<sup>55</sup> Ragnell did not execute proper precautionary measures, which resulted in the 76 civilian deaths. The principle of precaution requires armed forces to take all feasible measures to spare civilian life and objects.<sup>56</sup> Ragnell, however, merely relied upon a Balani informant with limited access to the Compound and a history of providing inaccurate and misleading intelligence.<sup>57</sup> Given the informant lacked credibility, there was a reasonable need to investigate further. Had Ragnell collected more recent drone footage, which it had the capacity to do,<sup>58</sup> Ragnell would have obtained timely information about the civilians residing in the Compound. Regardless, mistakes of fact do not constitute a circumstance precluding wrongfulness.<sup>59</sup>

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<sup>49</sup> API, Art.51(5)(b).

<sup>50</sup> Compromis, ¶15.

<sup>51</sup> *Id.*, ¶40.

<sup>52</sup> *Id.*, ¶41

<sup>53</sup> *Id.*, ¶27.

<sup>54</sup> *Id.*, ¶48.

<sup>55</sup> API, Art.52 (describing military bases as military objects).

<sup>56</sup> API, Art.57(1). This principle is recognised as customary in nature: *Prosecutor v. Kupreškić et al.*, IT-95-16-T, ICTY (2000); *Case 11.137 (Argentina)*, IACHR, OEA/Ser.:V/II.98, ¶177 (1997); API, Art.57; ICRC Customary Rules, Rule 15.

<sup>57</sup> Compromis, ¶48.

<sup>58</sup> *Id.*, ¶47.

<sup>59</sup> ARSIWA, Chapter V

**C. Ragnell is obligated to pay reparations to Aglovale for the deaths of the eight Aglovalean nationals.**

A State that committed an internationally wrongful act must make reparations to the injured State.<sup>60</sup> This principle applies during armed conflicts.<sup>61</sup> When restitution is not materially possible,<sup>62</sup> the State that committed the wrongful act is obligated to pay compensatory damages.<sup>63</sup> Compensation is warranted for the loss of life or damage suffered by individuals,<sup>64</sup> as these are circumstances that cannot be restored by restitution.<sup>65</sup> Even if Ragnell had offered an *ex gratia* payment—which it has not, unlike other similarly situated States<sup>66</sup>—it would not relieve Ragnell of its responsibility for grave breaches of the Geneva Conventions.<sup>67</sup> Thus, if this Court finds Ragnell responsible for the deaths of Aglovalean nationals resulting from its violations of *jus in bello* obligations under the Treaty, payment of reparations is required.

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<sup>60</sup> ARSIWA, Art.31. *See Factory at Chorzów*, (Germany v. Poland), 1927, P.C.I.J., (ser. A) No. 9, ¶29 [“*Chorzów*”]; *Gabčíkovo-Nagymaros Project* (Hungary v. Slovakia), 1997 I.C.J. 7, ¶152 [“*Gabčíkovo-Nagymaros*”].

<sup>61</sup> API, Art.91; Hague Convention (IV) Respecting the Laws and Customs of War on Land, 1907, Art.3 [“**Hague IV**”].

<sup>62</sup> ARSIWA, Art.35.

<sup>63</sup> *Id.*, Art.36(1).

<sup>64</sup> *Chorzów*, ¶28; *See also* ARSIWA Commentaries, 247.

<sup>65</sup> *Armed Activities*, Reparations, ¶101.

<sup>66</sup> *See, e.g.*, U.S. payments to the families of those impacted by the Kunduz hospital strike, U.S. compensation for Chinese nationals affected by the accidental bombing of the Chinese embassy in Belgrade, and Israeli’s payments to the victims of the 1973 Libyan airliner shot down by mistake.

<sup>67</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949, 75 U.N.T.S. 31, Art.51 [“**GCI**”], Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949, 75 U.N.T.S. 85, Art.52 [“**GCI**”], Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, Art.131, 75 U.N.T.S. 135 [“**GCI**”]; GCIV, Art.148; *see also* API, Art.91 for IACs.

## **II. RAGNELL VIOLATED ITS TREATY OBLIGATIONS BY EMPLOYING CAPTURED UAC FIGHTERS IN THE TRANSPORTATION OF CONTAMINATED PLASTIC WASTE, AND BY DETAINING THEM IN CAMLANN CORRECTIONAL CENTER.**

Aglovale has standing to bring claims regarding treatment of the UAC detainees [A]. Ragnell violated its Treaty obligations in employing the detainees [B] and transferring them to Camlann [C].

### **A. Aglovale has standing to bring claims regarding treatment of the UAC detainees.**

The Treaty ended the Clarent War by establishing various obligations between Aglovale, Ragnell, and Balan.<sup>68</sup> In particular, Article 2(2) requires all parties to take “all necessary measures” to prevent violations of “all applicable principles of human rights and international humanitarian law.”<sup>69</sup> Article 41 allows any party to submit a dispute to this Court based on an alleged violation.<sup>70</sup> These provisions together demonstrate that *jus in bello* and international human rights law principles are owed *erga omnes partes* to all parties.<sup>71</sup>

Grave breaches of *jus in bello* rules, codified in the Geneva Conventions and API and incorporated into the Treaty,<sup>72</sup> also give rise to *erga omnes partes* standing.<sup>73</sup> Ragnell’s deportation and inhuman treatment of the UAC detainees constitute grave breaches of *jus in bello* rules.<sup>74</sup> Thus, Aglovale has standing to bring these claims.

### **B. Ragnell violated its Treaty obligations by using UAC labour to transport waste.**

Ragnell violated its Treaty obligations owed to prisoners of war (“POWs”) [1]. Even if the UAC detainees were not POWs, their rights were still violated [2].

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<sup>68</sup> Compromis, ¶¶10-11; Treaty, Arts.2(2), 3.

<sup>69</sup> Treaty, Arts.2(2), 41.

<sup>70</sup> Compromis, ¶25.

<sup>71</sup> *Questions relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal), 2012 I.C.J. 144, ¶69; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v. Myanmar), 2022 I.C.J. 1, ¶40. See also *Wall*, ¶158.

<sup>72</sup> Treaty, Art.2(2).

<sup>73</sup> See API, Art.86; GCIII, Art.129; GCI-IV, Art.1.

<sup>74</sup> *Id.*

1. Ragnell violated obligations owed to POWs under GCIII and API.

The UAC detainees were POWs [i], to whom Ragnell violated obligations [ii].

*i. Captured UAC fighters were POWs.*

Ragnell was party to an international armed conflict in the Clarent Belt.<sup>75</sup> Ragnell must respect the UAC detainees' rights under API and the Geneva Convention III ("GCIII"),<sup>76</sup> both applicable in international armed conflicts.<sup>77</sup> Any combatant who falls into an adverse party's power is a POW.<sup>78</sup> "Combatants" include all members of a party's armed forces,<sup>79</sup> which consists of all organised armed forces under a command responsible to that party, even if the authority representing that party is not recognised by an adverse party.<sup>80</sup> The UAC fighters constituted a party under API,<sup>81</sup> which need not necessarily be a State.<sup>82</sup>

Furthermore, the UAC displayed the requisite organisation, fighting with a collective character under proper control and rules.<sup>83</sup> This organisation was demonstrated by their well-established command and control structures<sup>84</sup> and declaration to honour all applicable *jus in bello*.<sup>85</sup> They therefore were combatants under API and must enjoy protections accorded to POWs.

*ii. Ragnell violated obligations owed to POWs.*

a. GCIII Article 50 prohibited the work UAC detainees were compelled to do

Article 50(c) of GCIII only authorised Ragnell to compel POWs to transport and handle stores having no military character or purpose.<sup>86</sup> Article 50(f) similarly authorised work in public

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<sup>75</sup> See *supra* §I.B.1.

<sup>76</sup> Compromis, ¶64.

<sup>77</sup> GCIII, Art.2; API, Art.3(1).

<sup>78</sup> *Id.*, Art.44(1)

<sup>79</sup> *Id.*, Art.43(2)

<sup>80</sup> *Id.*, Art.43(1).

<sup>81</sup> See *supra* §I.B.1.

<sup>82</sup> ICRC, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF JUNE 1977 (1987), 506

[“API Commentary”].

<sup>83</sup> *Id.*, 512.

<sup>84</sup> Compromis, ¶35.

<sup>85</sup> Clarifications, ¶7.

<sup>86</sup> GCIII, Art.50(c).

utilities having no military character or purpose.<sup>87</sup> However, the UAC detainees handled waste that included “heat and flame-resistant plastic parts for use in military technology,”<sup>88</sup> rendering the work “military in character or purpose.”

Article 50(b) sets out an absolute prohibition<sup>89</sup> against compelling prisoners to do work related to “chemical industries.”<sup>90</sup> The GCIII drafters were concerned that working in chemical industries, often key military objectives, would endanger prisoners.<sup>91</sup> The plastic waste the UAC detainees handled included synthetic polymers such as polyethelene and polyvinyl chloride from chemical factories.<sup>92</sup> Moreover, the Park’s factory sites were both sides’ military objectives, threatening the lives of the working POWs.<sup>93</sup> Ragnell therefore also violated the prohibition against sending POWs to areas exposing them to combat fire.<sup>94</sup>

b. Ragnell violated POW obligations regarding labour conditions.

Labour of an “unhealthy or dangerous nature” is prohibited by Article 52 of GCIII.<sup>95</sup> The masks and gloves Ragnell provided to the POWs were insufficient protection against bacterial pathogens.<sup>96</sup> The WHO recommends providing heavy-duty gloves, industrial aprons, overalls, and industrial boots, at a minimum, to waste workers.<sup>97</sup> By failing to provide such protection, Ragnell breached Article 52.

Furthermore, a detaining power may intern POWs only in premises affording every guarantee of hygiene and healthfulness,<sup>98</sup> and must take measures ensuring cleanliness and

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<sup>87</sup> *Id.*, Art.50(f).

<sup>88</sup> Compromis, ¶16.

<sup>89</sup> ICRC, COMMENTARY ON THE THIRD GENEVA CONVENTION 268 (1960). [“**GCIII Commentary**”].

<sup>90</sup> GCIII, Art.50(b).

<sup>91</sup> GCIII Commentary, 268-269.

<sup>92</sup> Compromis, ¶5, ¶38.

<sup>93</sup> *Id.*, ¶27, ¶37.

<sup>94</sup> GCIII, Art.23.

<sup>95</sup> GCIII, Art.52.

<sup>96</sup> Compromis, ¶38.

<sup>97</sup> World Health Organization [“**WHO**”], SAFE MANAGEMENT OF WASTES FROM HEALTH-CARE ACTIVITIES 187 (2014).

<sup>98</sup> GCIII, Art.22.

healthfulness of camps.<sup>99</sup> This requires preventing exposure to dangerous substances, including chemical contamination and bacterial pathogens.<sup>100</sup> Work premises exposing POWs to toxic waste, which Ragnell has acknowledged pose “high[] risks to human health,”<sup>101</sup> far from guaranteeing hygiene and healthfulness, exposed POWs to the bacterial pathogens *Clostridioides difficile* and *Staphylococcus aureus*,<sup>102</sup> which cause life-threatening diarrhea, pneumonia, and sepsis.<sup>103</sup>

2. Even if the UAC detainees were not POWs, Ragnell still violated their rights.

Even if the UAC fighters were not POWs, Ragnell still violated its obligations under the Geneva Convention IV (“GCIV”) [i] and *jus in bello* rules regarding fundamental guarantees [ii].

i. *Ragnell violated its obligations under GCIV.*

If the UAC fighters were not POWs, they were necessarily civilians protected by GCIV.<sup>104</sup> According to the Geneva Conventions, “there is no intermediate status” between POWs, civilians, and medical personnel as protected by the Geneva Conventions.<sup>105</sup>

a. Ragnell, as an occupier, must comply with GCIV.

As established above, Ragnell’s occupation began when its military entered the Belt, violating the lease.<sup>106</sup> Occupation occurs when a territory is under the authority of a hostile

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<sup>99</sup> GCIII, Art.29.

<sup>100</sup> ICRC, COMMENTARY ON THE THIRD GENEVA CONVENTION, ¶1990 (2020) (“**Updated GCIII Commentary**”); *see also* U.S. Department of Defence, Law of War Manual §9.11.5.1 (2016) [“**DoD Manual**”]; U.K. Ministry of Defence [“**MoD**”], Joint Doctrine Publication 1-10, 97 (2020).

<sup>101</sup> Compromis, ¶46.

<sup>102</sup> *Id.*, ¶38, ¶44.

<sup>103</sup> *Id.*, ¶38; Centers for Disease Control and Prevention [“**CDC**”], “*Clostridioides difficile* Infection” (2019) [https://www.cdc.gov/hai/organisms/cdiff/cdiff\\_infect.html](https://www.cdc.gov/hai/organisms/cdiff/cdiff_infect.html); CDC, “Methicillin-resistant *Staphylococcus aureus*” (2019) <https://www.cdc.gov/mrsa/community/index.html>.

<sup>104</sup> GCIV, Art.4.

<sup>105</sup> ICRC, COMMENTARY ON THE FOURTH GENEVA CONVENTION 51 (1958) (“GCIV Commentary”).

<sup>106</sup> *See supra* §I.A.1.

power<sup>107</sup> that has effective control over it.<sup>108</sup> Evidence of effective control includes the occupier stationing sufficient forces that its authority is felt, issuing and enforcing directions to civilians, and appointing a temporary administrator.<sup>109</sup> Having stationed forces,<sup>110</sup> assumed administrative responsibility,<sup>111</sup> and issued and enforced orders to civilians in the Belt,<sup>112</sup> Ragnell was an occupier.

b. Ragnell violated protections afforded to civilians under GCIV.

If the UAC detainees were not POWs covered by GCIII, they were covered under GCIV, which protects those in the hands of an occupier and who are not protected by the other Geneva Conventions.<sup>113</sup> Although civilians lose their protection against attacks while they participate directly in hostilities,<sup>114</sup> they keep their civilian status once detained.<sup>115</sup> GCIV prohibits employing civilian internees “unless they so desire.”<sup>116</sup> None of the exceptions to this rule applies.<sup>117</sup> Therefore, such forced labour was unlawful under GCIV.

*ii. Ragnell violated the health and physical well-being of the UAC detainees in breach of fundamental guarantees.*

In international armed conflicts, all persons in the power of a party to the conflict are protected,<sup>118</sup> as are all persons in non-international conflicts who no longer participate in hostilities.<sup>119</sup> The UAC fighters in detention both were in Ragnell’s power and no longer

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<sup>107</sup> Hague IV, Regulations, Art.42; *Armed Activities*, ¶172; *Wall*, ¶78, ¶89.

<sup>108</sup> *Tadić*, ¶580; U.S. Army, Field Manual 27-10, §352 (1956); U.K. MoD, The Manual of the Law of Armed Conflict, §11.7 (2004); Italy, Stata maggiore della Difesa, Manuale di diritto umanitario, SMD-G-014, 32 (1991).

<sup>109</sup> *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, ICTY, ¶217 (2003); *Armed Activities*, ¶¶173-76.

<sup>110</sup> *Compromis*, ¶31.

<sup>111</sup> *Id.*, ¶11.

<sup>112</sup> *Id.*, ¶33, Clarifications, ¶5.

<sup>113</sup> GCIV, Art.4.

<sup>114</sup> API, Art.51(3); Protocol Additional to the Geneva Conventions of 12 August 1949, 1977, 1125 U.N.T.S. 609, Art.13(3) [“APII”].

<sup>115</sup> API, Art.50(1).

<sup>116</sup> GCIV, Art.95.

<sup>117</sup> *Id.*; *Prosecutor v. Prlić et al.*, IT-04-74-T, ICTY, (2013) ¶156. The exceptions relate primarily to the employment in medical and camp administration work.

<sup>118</sup> API, Art.75(1).

<sup>119</sup> APII, Art.4(2); *see also* GCI-IV, Art.3(1).

participated in hostilities.<sup>120</sup> They were thus guaranteed protection from violence to their life, health, or well-being.<sup>121</sup> By ordering the UAC detainees to handle toxic and infectious wastes with insufficient safety gear,<sup>122</sup> Ragnell endangered their health and well-being.

**C. Detaining UAC fighters at Camlann Correctional Facility violated Ragnell’s *jus in bello* and human rights obligations.**

Ragnell violated the prohibition against incarcerating POWs in penitentiaries [1], and, alternatively, its GCIV obligations [2]. Ragnell also violated due process rules [3] and *jus in bello* rules [4] regarding detention.

1. Ragnell violated the prohibition against incarcerating POWs in penitentiaries.

Internment of POWs in penitentiaries is prohibited.<sup>123</sup> Dictionaries, which may aid interpretation,<sup>124</sup> define “penitentiary” as “a prison.”<sup>125</sup> Transferring UAC detainees to a “maximum-security prison” in Ragnell<sup>126</sup> violated the prohibition on internment in penitentiaries.

2. Even if the UAC fighters were not POWs, Ragnell violated GCIV.

If the UAC detainees were not POWs protected by GCIII, they were protected under GCIV,<sup>127</sup> Article 49 of which prohibits forcibly transferring and deporting protected persons from occupied territory to the territory of the occupier, unless the security of the population or imperative military reasons demand such evacuation.<sup>128</sup> Even then, evacuation outside of occupied territory is prohibited unless doing otherwise is materially impossible,<sup>129</sup> which has been

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<sup>120</sup> Compromis, ¶36.

<sup>121</sup> API, Art.75(2)(a)-(b); APII, Art.4(2)(a), (e); GCI-IV, Art.3(c); *Nicaragua*, ¶218.

<sup>122</sup> *See supra* §II.B.1.ii.b.

<sup>123</sup> GCIII, Art.22.

<sup>124</sup> *Aegean Sea Continental Shelf* (Greece v. Turkey), 1978 I.C.J. 62, ¶81.

<sup>125</sup> Cambridge Dictionary, “Penitentiary,”

<https://dictionary.cambridge.org/us/dictionary/english/penitentiary>;

Oxford Learner’s Dictionaries, “Penitentiary,”

<https://www.oxfordlearnersdictionaries.com/us/definition/english/penitentiary>.

<sup>126</sup> Compromis, ¶49.

<sup>127</sup> *See supra* II.B.2.i.

<sup>128</sup> GCIV, Art.49.

<sup>129</sup> *Id.*

interpreted to mean physical impossibility.<sup>130</sup> Since Ragnell could have transferred the detainees to another area of the Belt, it was not materially impossible to evacuate them within occupied territory.<sup>131</sup>

3. Ragnell did not follow due process rules afforded to persons in the power of a party to the conflict.

Article 75 of API prohibits passing sentences unless pronounced by an impartial court. Imprisonment qualifies as a sentence.<sup>132</sup> As nearly ten months elapsed since the transfer with no evidence of a court order,<sup>133</sup> the detainees' imprisonment violated Article 75.

Alternatively, Ragnell did not follow due process rules required by Common Article 3 in non-international conflicts, which prohibits passing sentences against persons not participating in hostilities without previous judgment by a regularly constituted court.<sup>134</sup> As there appears to have been no court judgment, the imprisonment of UAC fighters violated Common Article 3.

4. Ragnell violated its human rights obligations by arbitrarily detaining the UAC fighters.

- i. *Ragnell's human rights obligations continue to apply during armed conflicts.*

Article 75(8) of API emphasises that its fundamental guarantees may not be construed to limit application of a more favourable provision of international law granting greater protection.<sup>135</sup> Under the Martens Clause, which appears in API,<sup>136</sup> Additional Protocol II ("APII"),<sup>137</sup> and the Geneva Conventions,<sup>138</sup> civilians and combatants remain protected by international law derived from custom, principles of humanity, and the dictates of public conscience. This Court has held

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<sup>130</sup> GCIV Commentary, 280; *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. 11-A, 664, 759-760.

<sup>131</sup> Compromis, ¶49; GCIV, Art.49.

<sup>132</sup> Rome Statute of the International Criminal Court Art.77(1), 1998, 2187 U.N.T.S. 3; U.S. Sentencing Commission, *Guidelines Manual*, §5C1.1 (2021); *see generally* South Africa, Criminal Law Amendment Act 105 (1997); Thailand, Criminal Code, B.E. 2499, §18.

<sup>133</sup> Compromis, ¶49

<sup>134</sup> GCI-IV, Art.3.

<sup>135</sup> API, Arts.75(8), 75(1).

<sup>136</sup> API, Art.1.

<sup>137</sup> APII, Preamble.

<sup>138</sup> GCI, Art.63; GCII, Art.62; GCIII, Art.142; GCIV, Art.158.

that human rights obligations apply alongside *jus in bello* during armed conflicts,<sup>139</sup> thereby applying to the captured UAC fighters.

*ii. Ragnell violated the human rights of the UAC detainees.*

Ragnell must respect the human rights of all individuals “within its territory and subject to its jurisdiction.”<sup>140</sup> Thus, while imprisoning the UAC fighters on its territory,<sup>141</sup> Ragnell was obligated to respect their rights as codified in the ICCPR. Ragnell may not arbitrarily detain a person except in accordance with procedures established by law.<sup>142</sup> During armed conflicts, arbitrariness of detention may be determined by *jus in bello*.<sup>143</sup> Article 43 of GCIII requires an initial review as soon as possible.<sup>144</sup> Applying this, Israel, for example, requires that civilians detained for participating in hostilities be brought before a court within 14 days.<sup>145</sup> Here, absent any trial before a competent court, the indefinite detention was arbitrary and violated Article 8 of the ICCPR.

**III. AGLOVALE ACTED IN ACCORDANCE WITH THE TREATY IN IMPOSING UNILATERAL SANCTIONS AGAINST RAGNELL AND RAGNELLIAN NATIONALS, AND HAS NO OBLIGATION TO WITHDRAW THE SANCTIONS, TO RETURN ANY PROPERTY, OR TO COMPENSATE RAGNELL FOR THEIR IMPACT.**

Aglovale’s unilateral sanctions complied with the non-intervention principle [A] and its human rights obligations [B]. Moreover, its seizure of Prydwen Palace complied with its ICCPR and customary obligations [C]. Aglovale also abided by its trade obligations [D] and respected its neutrality obligations [E]. Finally, Ragnell is not entitled to compensation, given insufficient causality between Aglovale’s alleged breaches and its injury [F].

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<sup>139</sup> Wall, ¶106; *see also* G.A. Res. 2675 (XXV) (1970).

<sup>140</sup> International Covenant on Civil and Political Rights, 1966, 999 U.N.T.S. 3, Art.2(1) [“ICCPR”].

<sup>141</sup> *See* Compromis, ¶49.

<sup>142</sup> ICCPR, Art.9(1).

<sup>143</sup> *Hassan v. U.K.*, No.29750/09, Judgment, ECtHR, ¶¶105-106 (2014); *see also Al-Jedda v. U.K.*, No.27021/08, Judgment, ECtHR, ¶107 (2011).

<sup>144</sup> GCIII, Art.43.

<sup>145</sup> *Iyad v. State of Israel*, CrimA 6659/06, Supreme Court of Israel, ¶40 (2008).

**A. Aglovale complied with customary international law governing friendly relations among States.**

Aglovale's sanctions comported with "customary international law governing friendly relations among states" as required by Article 2(1) of the Treaty, since it complied with the principle of non-intervention.<sup>146</sup> The measures did not intend to affect Ragnell's *domaine réservé*<sup>147</sup> [1] and were not unlawfully coercive [2].<sup>148</sup>

1. Aglovale's sanctions were not intended to affect Ragnell's *domaine réservé*.

A State's *domaine réservé* comprises matters unregulated by international law.<sup>149</sup> Breaches of *jus cogens* norms, such as aggression,<sup>150</sup> as well as the treatment of POWs and the conduct of hostilities, all fall outside a State's *domaine réservé*.<sup>151</sup> Because Aglovale's sanctions were intended to affect Ragnell's acts of aggression, treatment of detainees, and targeting practices,<sup>152</sup> they respected the non-intervention principle.

2. Aglovale's sanctions were not coercive.

Under this Court's jurisprudence, only measures on par with fomenting armed resistance against a State are coercive.<sup>153</sup> In *Nicaragua*, the Court held that the United States' economic embargo and opposition to international banks lending to Nicaragua did not rise to the level of coercion,<sup>154</sup> notwithstanding its economic leverage over Nicaragua,<sup>155</sup> which was similar in nature

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<sup>146</sup> U.N. Charter, Art.2(7); *Nicaragua*, ¶185, ¶202; Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625(XXV), Art.3(1) (1970).

<sup>147</sup> *Nicaragua*, ¶205; Antonios Tzanakopoulos, *The Right to be Free from Economic Coercion*, 4 CAM. J. INT'L. AND COMP. L. 616, 619-20 (2015).

<sup>148</sup> *Nicaragua*, ¶205.

<sup>149</sup> Katja S. Ziegler, *Domaine Réservé*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (Rudiger Wolfrum ed., 2012); *Nationality Decrees Issued in Tunis and Morocco* (U.K. v. France), Advisory Opinion No. 4, 1923 P.C.I.J. (ser. B) No. 4, 24.

<sup>150</sup> *Nicaragua*, ¶190

<sup>151</sup> *Compromis*, ¶52; *supra*, §II.C.

<sup>152</sup> *Compromis*, ¶52.

<sup>153</sup> *Armed Activities*, ¶¶160-63; *Nicaragua*, ¶242.

<sup>154</sup> *Nicaragua*, ¶¶244-45.

<sup>155</sup> *Id.*

to Aglovale’s relationship with Ragnell.<sup>156</sup> Aglovale’s sanctions, comprising a trade and financial embargo, were thus not coercive.<sup>157</sup>

## **B. Aglovale complied with its human rights obligations.**

Under Article 2(2) of the Treaty, Parties must apply all applicable principles of human rights law.<sup>158</sup> Aglovale is a party to the ICESCR,<sup>159</sup> which does not impose extraterritorial human rights obligations [1], and whose provisions were not violated by the sanctions [2].

### 1. Aglovale does not owe extraterritorial human rights obligations.

The ICESCR, like the ICCPR, only imposes extraterritorial human rights obligations when the affected individuals are within a State’s jurisdiction.<sup>160</sup> States have jurisdiction in territories under their effective control<sup>161</sup> or through their agents’ conduct over individuals abroad.<sup>162</sup> Extraterritorial human rights obligations should remain exceptional, even when the underlying treaty lacks textual limits on scope.<sup>163</sup> Despite some treaty bodies adopting a more expansive, “functional” view of jurisdiction,<sup>164</sup> based on whether State conduct foreseeably affects the enjoyment of rights abroad,<sup>165</sup> their decisions are not binding on this Court.<sup>166</sup> This functional approach should be rejected, as held by other bodies, because a State’s exercise of jurisdiction

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<sup>156</sup> Compromis, ¶4.

<sup>157</sup> *Id.*, ¶53.

<sup>158</sup> Treaty, Art.2.2

<sup>159</sup> Compromis, ¶64.

<sup>160</sup> *Wall*, ¶111; ICCPR, Art.2(1).

<sup>161</sup> *Wall*, ¶112; *Al-Skeini v. U.K.*, No.55721/07, Judgment, ECtHR, ¶138 (2011).

<sup>162</sup> *Georgia v. Russia (II)*, No.38263/08, Judgment, ECtHR, ¶81 (2021); *Sergio Euben Lopez Burgos v. Uruguay*, R.12/52, HRC, A/36/40, ¶12.3 (1981).

<sup>163</sup> *Mohammed Abdullah Saleh Al-Asad v Djibouti*, Communication 383/10, ACHPR, ¶134. (2014) [“*Al-Asad*”].

<sup>164</sup> MARKO MILANOVIĆ, EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES 134 (2011).

<sup>165</sup> *A.S. and others v. Italy*, CCPR/C/130/D/3042/2017, HRC, ¶7.8 (2021).

<sup>166</sup> *Application of the International Convention on the Elimination of All Forms of Discrimination* (Qatar v. U.A.E.), 2021 I.C.J. 172, ¶101.

pursuant to its obligations is “primarily territorial.”<sup>167</sup> Having withdrawn its peacekeepers,<sup>168</sup> Aglovale lacked jurisdiction over Ragnellians outside its territory.

## 2. Aglovale complied with the ICESCR.

Even for extraterritorial human rights obligations, a State is only responsible for conduct with causal and foreseeable effects on the rights’ enjoyment.<sup>169</sup> Aglovale complied with the ICESCR, particularly the rights to health and to have an adequate standard of living, given the insufficient causal nexus between the sanctions and the alleged effects. Moreover, the alleged effects did not reach the threshold for violations.

Article 12 of the ICESCR obliges States to protect the right to health, including the provision of basic instruments, immunization, and essential drugs.<sup>170</sup> There is insufficient evidence showing a direct causal or foreseeable link<sup>171</sup> between Aglovale’s sanctions, which do not reference the medical sector,<sup>172</sup> and Ragnell’s inability to import these goods. In fact, Ragnell’s military operations blocked access to and destabilised the Coast,<sup>173</sup> where medical supplies and vaccines are produced<sup>174</sup> and imported,<sup>175</sup> suggesting that its own activity likely impeded such access to health-related materials. Regardless, a violation only arises when a “significant number of individuals” are deprived of a minimum level of essential primary health care.<sup>176</sup> The inability of “some”<sup>177</sup> hospitals in Ragnell to import medicines and surgical instruments does not reach this level.

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<sup>167</sup> *Al-Asad*, ¶134. See also *Wall*, ¶111.

<sup>168</sup> *Compromis*, ¶33.

<sup>169</sup> *The Environment and Human Rights*, OC-23/17, Advisory Opinion, IACtHR, ¶101, (2017) [**“Environment and Human Rights”**].

<sup>170</sup> CESCR, General Comment No.14, E/C.12/2000/4, ¶43 (2000) [**“CESCR, GC14”**].

<sup>171</sup> *Environment and Human Rights*, ¶101.

<sup>172</sup> *Compromis*, ¶53d.

<sup>173</sup> *Id.*, ¶41.

<sup>174</sup> *Id.*, ¶29.

<sup>175</sup> *Id.*, ¶5.

<sup>176</sup> CESCR, General Comment No.3, E/1991/23, ¶10 (1990) [**“CESCR, GC3”**].

<sup>177</sup> *Compromis*, ¶54.

Moreover, Article 11 of the ICESCR requires States to ensure an adequate standard of living, including adequate food.<sup>178</sup> Aglovale did not contravene this right as no evidence indicated that hunger resulted from its sanctions. Indeed, fast-food chains and retailers left Ragnell<sup>179</sup> only “as a result” of third-country sanctions.<sup>180</sup>

### C. The seizure of Prydwen Palace complied with Aglovale’s obligations.

Aglovale’s seizure of Prydwen Place complied with its human rights obligations under Article 2(2) [1] and customary obligations under Article 2(1) of the Treaty [2].

#### 1. The seizure complied with Article 14 of the ICCPR.

Article 14 of the ICCPR codifies the right to a fair trial by an impartial court. In a fair trial, each side must be able to assert their rights and comment on relevant evidence under the principle of “equality of arms.”<sup>181</sup> Without indication that proceedings are “manifestly arbitrary,”<sup>182</sup> it is the courts’ purview to evaluate facts, evidence, and application of law.<sup>183</sup> Ector had the opportunity to contest the sanctions review procedure and his home’s seizure at both the trial court and the Supreme Court, and there was no indication that the proceedings were unfair.<sup>184</sup>

#### 2. The seizure complied with customary international law under Article 2(1) of the Treaty.

Property taken pursuant to a State’s police powers is not expropriatory.<sup>185</sup> An expropriation

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<sup>178</sup> International Covenant on Economic, Social and Cultural Rights, 1966, 993 U.N.T.S. 3, Art.11 [“ICESCR”].

<sup>179</sup> Compromis, ¶54.

<sup>180</sup> *Id.*

<sup>181</sup> *Jansen-Gielen v. The Netherlands*, CCPR/C/71/D/846/1999, HRC, ¶8.2 (2001); ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, ¶2(e) (2003).

<sup>182</sup> *Äärelä and Näkkäläjärvi v. Finland*, CCPR/C/73/D/779/1997, HRC, ¶7.3 (2001).

<sup>183</sup> Human Rights Committee, General Comment No.32, CCPR/C/GC/32, ¶27 (2007).

<sup>184</sup> Compromis, ¶57; Clarifications, ¶9. *Sayadi & Vinck v. Belgium*, CCPR/C/94/D/1472/2006, HRC, ¶10.9 (2008).

<sup>185</sup> American Law Institute, *Restatement of the Law (Third), the Foreign Relations of the United States* Vol. 1, §712 (1987) [“Restatement Third”]; Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens, A/CN.4/217 and Add.1, Art.10.5 (1969).

must be irreversible<sup>186</sup> and involve the transfer of control.<sup>187</sup> Therefore, asset freezes do not constitute expropriation.<sup>188</sup> The seizure of Ector’s property, as a permissible penalty for violating the sanctions regime, was thus not expropriatory.<sup>189</sup>

**D. Aglovale complied with its free trade obligations under Article 2(3) of the Trilateral Treaty.**

Article 2(3) of the Treaty requires Parties to promote free trade according to “all applicable principles of international law.” As Aglovale and Ragnell are World Trade Organisation (WTO) members,<sup>190</sup> the GATT applies to this dispute. Under the GATT, Aglovale’s sanctions qualify as a national security exception. The underlying essential security interests and whether the measures taken are necessary to protect them are non-justiciable [1].<sup>191</sup> Aglovale lawfully adopted the sanctions during an emergency in international relations [2] and acted in good faith [3].<sup>192</sup>

1. The chapeau of Article XXI is non-justiciable.

Under GATT Article XXI(b)(iii), a State can take “any action which it considers necessary for the protection of its essential security interests, taken in time of war or other emergency in international relations.” The text’s inclusion of the phrase “it considers” enables States to unilaterally determine their essential security interests and the requisite protective measures.<sup>193</sup> A State’s decision is non-justiciable. This Court previously construed a similar provision as

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<sup>186</sup> *LG&E Energy v. Argentina*, Decision on Liability, ICSID ARB/02/1, ¶193 (2006).

<sup>187</sup> *Pope & Talbot Inc. v. Canada*, Interim Award, UNCITRAL, ¶99 (2000).

<sup>188</sup> Even forced administration of a bank is insufficient. *Saluka v. Czech Republic*, Partial Award, UNCITRAL, ¶272 (2006).

<sup>189</sup> *Compromis*, ¶57; *Branch v. United States*, 69 F.3d 1571, 1576 (Fed. Cir. 1995); *Handyside v. United Kingdom*, Judgment, No.5493/72, ECtHR, ¶62, (1976); UNCTAD, EXPROPRIATION, UNCTAD SERIES ON ISSUES IN INTERNATIONAL INVESTMENT AGREEMENTS II 79 (2012).

<sup>190</sup> *Compromis*, ¶64.

<sup>191</sup> General Agreement on Tariffs and Trade, 1947, 55 U.N.T.S. 94, Art. XXI(b)(iii) [“GATT”].

<sup>192</sup> Panel Report, *Russia – Traffic in Transit*, WT/DS512/R, ¶¶7.131-7.133 (2019) [“*Traffic in Transit*”].

<sup>193</sup> *Traffic in Transit*, ¶7.146. Dapo Akande & Sope Williams, *International Adjudication on National Security Issues: What Role for the WTO?* 43 VIRGINIA J. INT’L. L. 365, 380 (2003).

justiciable only because the “it considers” language in Article XXI was absent.<sup>194</sup> Widespread State practice, including by Russia, China, the United States, and the European Union, supports a non-justiciable interpretation.<sup>195</sup>

2. The measures were taken during an emergency in international relations.

Only Article XXI’s subparagraphs are justiciable.<sup>196</sup> Here, they require that the measures were taken during a “war or emergency in international relations,”<sup>197</sup> such as a “latent armed conflict, or of heightened tension or crisis.”<sup>198</sup> Ragnell’s military activities, including its attacks on the Ardan Compound<sup>199</sup> and Nant Gateway,<sup>200</sup> satisfy this standard. Moreover, international concern, as manifested through the UNSC’s emergency meeting,<sup>201</sup> confirms the existence of an emergency in international relations.<sup>202</sup>

3. Aglovale enacted the measures in good faith.

Aglovale imposed the sanctions in good faith.<sup>203</sup> Restrictions must implicate an articulated security interest,<sup>204</sup> reasonably relate to that interest,<sup>205</sup> and not be intended to procure unfair advantages.<sup>206</sup> In this regard, good faith is presumed.<sup>207</sup> Here, Aglovale’s condemnation of Ragnell’s aggression, bombings, and interruption of seaport operations<sup>208</sup> constituted a “minimally

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<sup>194</sup> *Nicaragua*, ¶222.

<sup>195</sup> *Traffic in Transit*, ¶7.29, ¶7.41, ¶7.52, ¶7.43.

<sup>196</sup> *Id.*, ¶7.77.

<sup>197</sup> GATT, Art.XXI(b)(iii).

<sup>198</sup> *Id.*, ¶7.76.

<sup>199</sup> *Compromis*, ¶48.

<sup>200</sup> *Id.*, ¶41.

<sup>201</sup> *Id.*, ¶34.

<sup>202</sup> *Traffic in Transit*, ¶7.122.

<sup>203</sup> *Id.*, ¶7.131; Appellate Body Report, *US – Shrimp*, WT/DS58/AB/R, ¶158 (1998) [“**Shrimp**”].

<sup>204</sup> *Traffic in Transit*, ¶7.134.

<sup>205</sup> *Id.* ¶7.139.

<sup>206</sup> *Shrimp*, ¶158.

<sup>207</sup> Appellate Body Report, *Chile - Alcoholic Beverages*, WT/DS87/AB/R, ¶74 (1999).

<sup>208</sup> *Compromis*, ¶52.

satisfactory”<sup>209</sup> articulation of its interests in protecting the Coast.<sup>210</sup> The measures, which reduced the trade in military goods<sup>211</sup> to Ragnell, were not “unrelated to” this interest.<sup>212</sup> Finally, Aglovale did not abuse its rights<sup>213</sup> because the restrictions did not give its own traders unfair advantages.

**E. Aglovale complied with its Article 6(4) neutrality obligations.**

Aglovale had no obligation to stay neutral in its economic relations, because Article 6(4) of the Treaty only requires Aglovale to stay neutral in its “peacekeeping and monitoring functions.” The Treaty therefore does not prevent Aglovale from enacting non-neutral economic sanctions.

Moreover, Aglovale’s neutrality is conditioned on access to the Coast, which it lost when Ragnell destroyed the Nant Gateway [1]. Finally, Aglovale can derogate from neutrality because Ragnell committed acts of aggression [2].

1. Aglovale’s neutrality is conditioned on access to the Coast.

Aglovale’s sanctions respected its neutrality commitments because King Norton IV conditioned neutrality on Aglovale’s access to the Coast during the original Clarent War.<sup>214</sup> He made a unilateral declaration that both Ragnell and Balan recognised,<sup>215</sup> creating a lasting legal obligation.<sup>216</sup> Aglovale never revoked or modified the condition for its neutrality, with which Queen Clarine’s subsequent statements<sup>217</sup> and the Treaty’s provisions remained consistent.<sup>218</sup> Because Ragnell violated the condition by destroying access to the Coast,<sup>219</sup> Aglovale was entitled to derogate from its neutrality through sanctions.

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<sup>209</sup> *Traffic in Transit*, ¶7.137; Panel Report, *Saudi Arabia – Intellectual Property Rights*, WT/DS567/R, ¶7.281 (2020).

<sup>210</sup> Treaty, Art.15.

<sup>211</sup> Compromis, ¶53.

<sup>212</sup> *Traffic in Transit*, ¶7.145.

<sup>213</sup> *Shrimp*, ¶158.

<sup>214</sup> Compromis, ¶9.

<sup>215</sup> ILC, *Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, With Commentaries Thereto*, ¶3(3) (2006); Compromis, ¶9.

<sup>216</sup> *Nuclear Tests* (Australia v. France), 1974 I.C.J. 58, ¶43.

<sup>217</sup> Compromis, ¶9.

<sup>218</sup> Treaty, Art.6.4.

<sup>219</sup> Compromis, ¶41.

2. Ragnell’s aggression permitted Aglovale to derogate from neutrality.

Regardless, States can treat aggressors and victims of aggression differently under the “qualified neutrality” doctrine,<sup>220</sup> reflected in State practice by the United States<sup>221</sup> and constitutionally neutral states like Switzerland.<sup>222</sup> Aglovale did not require UNSC backing to determine whether Ragnell committed aggression,<sup>223</sup> as Article 6(4)(b) of the Treaty enables it to document infringements.<sup>224</sup> Aglovale could accordingly derogate from its neutrality by sanctioning Ragnell.

**F. Aglovale is not obliged to make reparations.**

A State is liable for reparations only when “there is a sufficiently direct and certain causal nexus between the wrongful act ... and the injury suffered.”<sup>225</sup> Such causal nexus requires that Ragnell’s injury “would in fact have been averted” absent Aglovale’s alleged breach.<sup>226</sup> Ragnellian forces damaged Ragnellian corporations<sup>227</sup> and destroyed access to the Coast,<sup>228</sup> impeding largely profitable Ragnellian industries.<sup>229</sup> Even without Aglovale’s sanctions, nothing suggests Ragnell would have avoided injury because its own activities inflicted economic damage. Moreover, this Court<sup>230</sup> and other tribunals have rejected compensation for macroeconomic injury where variables

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<sup>220</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970)*, Separate Opinion of Vice-President Ammoun, 1971 I.C.J. 53, 93; HERSCH LAUTERPACHT, OPPENHEIM’S INTERNATIONAL LAW 221 (§61); DoD Manual, ¶15.2.2.

<sup>221</sup> DoD Manual, n.38.

<sup>222</sup> Swiss Neutrality in Practice – Current Aspects, Report of the Interdepartmental Working Group, ¶3.2.1 (2000).

<sup>223</sup> Compromis, ¶34.

<sup>224</sup> Treaty, Art.6.4(b).

<sup>225</sup> *Certain Activities*, Compensation, 2018 I.C.J. 150, ¶34; ARSIWA, Art.31.

<sup>226</sup> *Genocide*, ¶462.

<sup>227</sup> Compromis, ¶14, ¶37.

<sup>228</sup> *Id.*, ¶41.

<sup>229</sup> Compromis, ¶16.

<sup>230</sup> *Armed Activities*, Reparations, ¶372, ¶381.

like inflation and unemployment arise from “a tangled network of causes and effects.”<sup>231</sup> Therefore, Aglovale is not obliged to make reparations to Ragnell.

**IV. RAGNELL’S WASTE EXPORT TO ETNA VIOLATED THE TREATY, WHILE AGLOVALE COMPLIED WITH THE TREATY IN CONDITIONING COOPERATION REGARDING WASTE TREATMENT ON TERMINATION OF RAGNELL’S AGGRESSION.**

Article 28 of the Treaty, which requires preventing environmental harm, continues to apply during armed conflict [A]. Ragnell breached the obligation when exporting waste to Etna [B]. On the other hand, Aglovale upheld its obligation to “cooperate in good faith” under Article 28 when it conditioned negotiations on the cessation of hostilities [C].

**A. Environmental treaty obligations apply during armed conflict.**

Treaty obligations concerning environmental protection continue to apply during armed conflict when they do not prevent the pursuit of legitimate, necessary, and proportionate military objectives.<sup>232</sup> Handling waste did not prevent Ragnell from pursuing its military objectives.<sup>233</sup> Thus, Article 28, imposing compliance with “all relevant rules of international law,”<sup>234</sup> continued to apply.

**B. Ragnell breached the Treaty when it exported waste to Etna.**

Ragnell’s waste export to Etna resulted in incineration and dumping [1]. Ragnell violated Article 28 when it breached customary and due diligence obligations related to the Basel [2] and Stockholm Conventions [3].

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<sup>231</sup> *U.S.-Germany Mixed Claims Commission*, Administrative Decision II, Award, 7 R.I.A.A. 1, 28 (1923); *Ethiopia’s Damages Claims*, Final Award, Eritrea-Ethiopia Claims Commission, Decision, 26 R.I.A.A. 631, ¶395 (2009).

<sup>232</sup> *Nuclear Weapons*, ¶30. *See also* ILC, Draft Articles on the Effects of Armed Conflicts on Treaties, Art.7 & Annex.

<sup>233</sup> *Compromis*, ¶47.

<sup>234</sup> Treaty, Art.28.

1. Ragnell’s waste export to Etna resulted in environmentally harm.

Independent technical experts initially reported that Ragnell’s waste export would cause Etna to employ environmentally harmful waste disposal methods.<sup>235</sup> Subsequent un rebutted reports confirmed this occurred.<sup>236</sup> This Court has relied on such reports by independent non-profits as evidence,<sup>237</sup> and gives particular weight where their accuracy is unchallenged by impartial parties.<sup>238</sup> That is the case here, where only Etna, a politically interested party, rejected the first report.<sup>239</sup> This Court should thus rely on the ILSA’s scientific evidence as evidence.

2. Ragnell violated its obligations related to the Basel Convention.

Ragnell violated both customary norms reflected by the Basel Convention [i] and due diligence obligations informed by the Convention [ii].

*i. Ragnell violated customary norms reflected by the Basel Convention.*

a. Ragnell failed to ensure environmentally sound management of waste.

The Basel Convention (“Basel”) sets out obligations on the transboundary movement of waste. Under Article 4(8), Parties must require that exported waste receive environmentally sound management (“ESM”) in the importing State.<sup>240</sup> Under Article 4(2)(d), States must ensure that the transboundary movement of waste is “conducted in a manner which will protect human health and the environment.”<sup>241</sup> The 2019 Plastic Waste Amendments extended these obligations to most plastic waste.<sup>242</sup>

These provisions, supported by *opinio juris* and extensive and virtually uniform state practice, reflect customary international law.<sup>243</sup> Indeed, widespread and representative

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<sup>235</sup> Compromis, ¶45.

<sup>236</sup> *Id.*, ¶45.

<sup>237</sup> *Armed Activities*, ¶129, ¶135.

<sup>238</sup> *Id.*, ¶61.

<sup>239</sup> Compromis, ¶45; *see Armed Activities*, ¶129.

<sup>240</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989, 1673 U.N.T.S. 57, Art.4(8) [“**Basel**”].

<sup>241</sup> Basel, Art.4(2)(d).

<sup>242</sup> Amendments to Annexes II, VIII and IX to the Basel Convention, Basel Convention Secretariat.

<sup>243</sup> *North Sea Continental Shelf* (Germany v. Netherlands), 1969 I.C.J. 3, ¶77, ¶74 [“**North Sea**”].

participation in the nearly-universally ratified Basel Convention,<sup>244</sup> including by States with specially affected interests, proves that the norms set out therein are customary.<sup>245</sup> The requirement to ensure ESM of waste also appears in other treaties and legal instruments,<sup>246</sup> including bilateral agreements signed by the United States, a specially affected non-party.<sup>247</sup>

In practice, the requirement to ensure ESM of exported wastes is implemented through external verification of the importer's ability to treat waste. For example, Taiwan requires the exporter to send personnel abroad to investigate the importer's disposal ability.<sup>248</sup> The EU's proposed Waste Shipment Regulation allows waste exports only to States that implemented measures ensuring ESM.<sup>249</sup> Ragnell, however, failed to perform any prior verification of Etna's ability to ensure ESM of waste, notwithstanding the waste's classification as "other wastes" under Annex II<sup>250</sup> and "hazardous wastes" under Annexes I, II, and VIII to the Basel Convention.<sup>251</sup>

- b. There is no common but differentiated duty for obligations related to the Basel Convention.

Etna's status as a developing country does not excuse Ragnell's violation of its obligations under the Basel Convention. The principle of common but differentiated responsibilities is not

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<sup>244</sup> Parties to the Basel Convention, <http://www.basel.int/?tabid=4499>.

<sup>245</sup> *North Sea*, ¶3; See also James Crawford, *Chance, Order, Change: The Course of International Law*, 365 *Recueil des Cours in HAGUE ACADEMY POCKETBOOKS*, ¶167 (2013).

<sup>246</sup> Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, 1991, 2101 U.N.T.S. 177, Arts.4(3)(i)-(k), 6(3); Organisation for Economic Cooperation and Development (OECD), Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations, OECD/LEGAL/0266, Art.1(a) (1992); European Parliament, Regulation No.1013/2006, Art.34 (2006).

<sup>247</sup> Arrangement between the Government of the United States of America and the Government of Canada concerning the Environmentally Sound Management of Non-Hazardous Waste and Scrap Subject to Transboundary Movement, 2020, §II. The U.S. is also bound by OECD/LEGAL/0266, *supra* n.240.

<sup>248</sup> Taiwan, Management Regulations for the Import and Export of Industrial Waste, Art.11.XIII (Amended 2018).

<sup>249</sup> European Commission, Proposal on shipments of waste, Arts.39(3), 56 (2021).

<sup>250</sup> Basel, Annex II, Y48.

<sup>251</sup> Basel, Annex I, Y1; Annex II, H6.2; Annex VIII, A3210, A4020.

customary.<sup>252</sup> Furthermore, under Basel, the requirement to ensure ESM of waste applies without differentiation.<sup>253</sup> The Convention even discourages waste transport to developing countries due to their limited management capabilities.<sup>254</sup>

*ii. Ragnell violated its due diligence obligations informed by the Basel Convention*

Ragnell is bound by independent customary due diligence obligations, which require “the adoption of appropriate rules and measures” to prevent transboundary environmental harm.<sup>255</sup> A State must employ “all the means at its disposal” to prevent significant environmental damage.<sup>256</sup> The greater the risk, the more burdensome the obligation to act with due diligence.<sup>257</sup> Due diligence is informed by the “general corpus of international law” relevant to environmental protection.<sup>258</sup> The Basel Convention thus informs due diligence standards for transboundary movement of plastic waste.<sup>259</sup> The Basel Secretariat emphasises that evaluating ESM involves assessing the importing country’s receiving facilities and legal system.<sup>260</sup> Nonetheless, Ragnell signed a waste export agreement without first evaluating Etna’s waste disposal capabilities,<sup>261</sup> thereby violating its due diligence obligations.

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<sup>252</sup> Lavanya Rajamani, *The Doctrinal Basis for and Boundaries of Differential Treatment in International Environmental Law*, in DIFFERENTIAL TREATMENT IN INTERNATIONAL LAW 159 (2006).

<sup>253</sup> Basel, Art.4(2)(d).

<sup>254</sup> Basel, Preamble, ¶8.

<sup>255</sup> *Pulp Mills*, ¶197; *Gabčíkovo-Nagymaros*, ¶140.

<sup>256</sup> *Pulp Mills*, ¶101; *Responsibilities and obligations of states sponsoring persons and entities with respect to activities in the area*, Advisory Opinion, 2011, ITLOS, 17, ¶110.

<sup>257</sup> *Construction of a Road in Costa Rica along the San Juan River* (Nicaragua v. Costa Rica), 2015 I.C.J. 150, ¶104.

<sup>258</sup> *The South China Sea Arbitration* (Philippines v. China), PCA No.2013-19, Award, ¶956, ¶959 (2016). [“**South China Sea**”]; *See also Pulp Mills*, ¶197.

<sup>259</sup> Eva Romée van der Marel, *Trading Plastic Waste in a Global Economy: Soundly Regulated by the Basel Convention?* 34 J. ENV. L. 477, 491 (2022).

<sup>260</sup> U.N. Environment Programme, Framework for the environmentally sound management of hazardous wastes and other wastes, UNEP/CHW.11/3/Add.1/Rev.1, ¶7, ¶39 (2013).

<sup>261</sup> *Compromis*, ¶44.

3. Ragnell violated obligations related to the Stockholm Convention.

Ragnell violated both customary norms reflected by the Stockholm Convention [i] and due diligence obligations informed by the Convention [ii].

*i. Ragnell violated customary norms reflected in Stockholm.*

The Stockholm Convention reflects customary international law. The Convention has been ratified by 186 parties,<sup>262</sup> demonstrating “widespread and representative participation.”<sup>263</sup> Even non-parties, including Malaysia and the United States, have shown state practice and *opinio juris*, both having deregistered most pollutants required by Stockholm,<sup>264</sup> and the United States acknowledges Stockholm’s “prominent role in the control of harmful chemicals on both a national and global level.”<sup>265</sup>

Etna’s waste incineration facilitates the release of pollutants that fall under Annex C, particularly polychlorinated dibenzo-p-dioxins (PCDDs),<sup>266</sup> the production of which must be minimised under Article 5 through the adoption of “best available techniques.”<sup>267</sup> The WHO recommends low-heat thermal-based and chemical-based processes as the best techniques for treating medical waste,<sup>268</sup> as they are accessible, Stockholm-compliant technologies for low and middle-income countries.<sup>269</sup> Meanwhile, PCCDs released from incineration can accumulate in the environment, cause developmental problems, damage the immune system, and cause cancer.<sup>270</sup> By

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<sup>262</sup> Stockholm Convention on Persistent Organic Pollutants, 2001, 2256 U.N.T.S. 119. [“**Stockholm**”]

<sup>263</sup> *North Sea*, ¶73.

<sup>264</sup> International POPs Elimination Project, Malaysia Country Situation Report, 3 (2005) [https://ipen.org/sites/default/files/documents/2mal\\_malaysia\\_country\\_situation\\_report-en.pdf](https://ipen.org/sites/default/files/documents/2mal_malaysia_country_situation_report-en.pdf). U.S. Environmental Protection Agency, Persistent Organic Pollutants: A Global Issue, A Global Response, <https://www.epa.gov/international-cooperation/persistent-organic-pollutants-global-issue-global-response#stockholm>.

<sup>265</sup> *Id.*

<sup>266</sup> Stockholm, Annex C.

<sup>267</sup> Stockholm, Art.5(d).

<sup>268</sup> WHO, Overview of technologies for the treatment of infectious and sharp waste from health care facilities, 16–29 (2019).

<https://apps.who.int/iris/bitstream/handle/10665/328146/9789241516228-eng.pdf>.

<sup>269</sup> *Id.* 28–29.

<sup>270</sup> WHO, Dioxins and their effects on human health (2016), <https://www.who.int/news-room/fact-sheets/detail/dioxins-and-their-effects-on-human-health>.

failing to adopt any means—much less “all the means at its disposal”—to investigate Etna’s waste treatment capabilities, Ragnell violated custom reflected in the Stockholm Convention.

*ii. Ragnell violated its due diligence obligations informed by the Stockholm Convention.*

Even if Stockholm does not reflect custom, customary due diligence obligations still apply. Since due diligence is informed by the “general corpus” of international environmental law,<sup>271</sup> the Stockholm Convention gives content to it. Due diligence thus entails ensuring waste treatment with the “best available techniques” where possible.<sup>272</sup> By failing to investigate or ensure that Etna employs the “best available techniques,” Ragnell violated its due diligence obligations.

### **C. Aglovale complied with the Trilateral Treaty in conditioning cooperation.**

#### **1. Aglovale discharged its duty to cooperate in good faith.**

Under Article 28 of the Treaty, the Parties must take steps “necessary” or “reasonably requested by other Parties ... to cooperate in good faith.”<sup>273</sup> The duty to cooperate is informed by the treaties it originates in.<sup>274</sup> It may include a duty to negotiate in good faith,<sup>275</sup> where parties “enter into negotiations with a view to arriving at an agreement.”<sup>276</sup> Good faith negotiations do not require lengthy negotiations or even reaching an agreement.<sup>277</sup>

Upon Ragnell’s request to transfer waste, Aglovale began the negotiations necessary to accomplish this.<sup>278</sup> Although unsuccessful, Aglovale committed to negotiating again two weeks later,<sup>279</sup> demonstrating willingness to come to an agreement. Furthermore, Aglovale resumed

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<sup>271</sup> *South China Sea*, ¶956.

<sup>272</sup> Stockholm, Art.5.

<sup>273</sup> Treaty, Art.28.

<sup>274</sup> *Pulp Mills*, ¶174, *Gabčíkovo-Nagymaros*, ¶142.

<sup>275</sup> *Gabčíkovo-Nagymaros*, ¶¶141-42.

<sup>276</sup> *North Sea*, ¶85.

<sup>277</sup> *Application of the Interim Accord of 13 September 1995* (Macedonia v. Greece), 2011 I.C.J. 644, ¶132.

<sup>278</sup> *Compromis*, ¶39.

<sup>279</sup> *Id.*, ¶39.

negotiations around waste management in June and July 2022,<sup>280</sup> displaying an openness to modify its original position of conditioning negotiations. Aglovale thus cooperated in good faith.

2. Aglovale employed a lawful countermeasure precluding wrongfulness.

*i. Aglovale fulfilled the procedural requirements for countermeasures.*

Any refusal by Aglovale to cooperate was justified as a lawful countermeasure in response to Ragnell’s violation of Article 15 of the Treaty.

Under ARSIWA Article 49,<sup>281</sup> which reflects custom,<sup>282</sup> a State may adopt countermeasures in response to a “previous international wrongful act,”<sup>283</sup> after calling on the other State to discontinue or make reparation for its wrongful conduct.<sup>284</sup> Aglovale cancelled waste management negotiations in response to Ragnell’s Nant Gateway bombing,<sup>285</sup> which violated Article 15 of the Treaty. Aglovale called the attack “unacceptable” under *jus in bello*<sup>286</sup> and demanded that Ragnell halt its military activities.<sup>287</sup>

While Article 49 generally requires that the State announce the countermeasures and offer to negotiate,<sup>288</sup> this requirement does not apply when, as here, the State is taking an urgent countermeasure. An urgent countermeasure is “necessary to preserve [the State’s] rights,”<sup>289</sup> including the very right to take countermeasures.<sup>290</sup> Since Aglovale’s countermeasure entailed cancelling negotiations, offering to negotiate would have voided the countermeasure’s effect.

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<sup>280</sup> *Id.*, ¶61.

<sup>281</sup> ARSIWA, Art.49.

<sup>282</sup> *Gabčíkovo-Nagymaros*, ¶83; *Nicaragua*, ¶249; *Archer Daniels Midland Company v. Mexico*, ICSID ARB(AF)/04/05, Award, ¶125 (2007); Appellate Body Report, *U.S.—Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/AB/R, ¶259 (2002).

<sup>283</sup> *Gabčíkovo-Nagymaros*, ¶83

<sup>284</sup> *Id.*, ¶84

<sup>285</sup> *Compromis*, ¶42.

<sup>286</sup> *Id.*, ¶42.

<sup>287</sup> *Id.*, ¶43

<sup>288</sup> ARSIWA, Art.52; *Air Services Agreement (France v. U.S.)*, Award, 18 R.I.A.A. 416 ¶¶85-87 (1978).

<sup>289</sup> *Id.*

<sup>290</sup> ARSIWA Commentaries, Art.52, ¶6.

ii. *Aglovale fulfilled the substantive requirements for countermeasures.*

Countermeasures must be “limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.”<sup>291</sup> Aglovale refused to participate in negotiations only until Ragnell ceased its unlawful military activities.<sup>292</sup>

Furthermore, countermeasures must “as far as possible ... permit the resumption” of international obligations.<sup>293</sup> Countermeasures must be reversible,<sup>294</sup> but not their effects.<sup>295</sup> Aglovale was ready to resume negotiations as soon as Ragnell ceased its illegal military activities.<sup>296</sup> Its countermeasure was thus reversible. Indeed, Ragnell itself created the environmental hazard at issue due to its own unlawful use of force and reckless handling of waste.<sup>297</sup> Ragnell could have easily ceased military activities so that negotiations could resume.

3. Ragnell’s destruction of the Nant Gateway made cooperation through the transfer of waste impossible.

Under customary international law as reflected in Article 61 of the Vienna Convention on the Law of Treaties,<sup>298</sup> impossibility permits the termination or withdrawal from a treaty if it results from the destruction of “an object indispensable for the execution of the treaty.”<sup>299</sup> Situations envisaged include the destruction of infrastructure such as dams or hydro-electric installations that are indispensable for a treaty’s execution.<sup>300</sup>

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<sup>291</sup> ARSIWA, Art.49(2). *See also Corn Products v. Mexico*, ICSID ARB(AF)/04/1, Decision on Responsibility, ¶146 (2008).

<sup>292</sup> Compromis, ¶43.

<sup>293</sup> ARSIWA, Art.49(3).

<sup>294</sup> *Gabčíkovo-Nagymaros*, ¶87.

<sup>295</sup> James Crawford, Third Report on State Responsibility – Addendum 3, A/CN.4/507/Add.3, 330 (2000); ARSIWA Commentaries, Art.49, ¶9.

<sup>296</sup> Compromis, ¶43.

<sup>297</sup> *Id.*, ¶37.

<sup>298</sup> *Gabčíkovo-Nagymaros*, ¶46.

<sup>299</sup> Vienna Convention on the Law of Treaties, 1969, 1155 U.N.T.S. 119, Art.61(1).

<sup>300</sup> Official Records of the U.N. Conference on the Law of Treaties, First Session, 1968, A/CONF.39/11, 75.

Aglovale is landlocked.<sup>301</sup> When Ragnell bombed the Gateway, it “[halted] completely all movement into and out of Tintagel Coast.”<sup>302</sup> The Gateway’s destruction therefore rendered Aglovale’s cooperation under Article 28 impossible.

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<sup>301</sup> Compromis, ¶15, ¶1.

<sup>302</sup> *Id.*, ¶41.

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**PRAYER FOR RELIEF**

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For the aforementioned reasons, the Kingdom of Aglovale, the Applicant, respectfully prays that this Honourable Court:

- I. **DECLARE** that Ragnell’s launching of “Operation Shining Star” and subsequent attacks on the Nant Gateway and Compound Ardan were inconsistent with the Treaty, and Ragnell owes compensation for the deaths of Aglovalean citizens.
  
- II. **DECLARE** that Ragnell’s employment, transfer, and detention of captured UAC fighters were inconsistent with the Treaty.
  
- III. **DECLARE** that Aglovale’s imposition of unilateral sanctions against Ragnell and Ragnellian nationals was consistent with the Treaty.
  
- IV. **DECLARE** that Ragnell’s transportation of hazardous plastic waste to Etna was inconsistent with the Treaty.

Respectfully submitted,

17 January 2023

Agents for Aglovale