

IN THE  
INTERNATIONAL COURT OF JUSTICE  
THE PEACE PALACE  
THE HAGUE  
THE NETHERLANDS



**2023 Philip C. Jessup International Law Moot Court Competition**

**THE CASE CONCERNING THE CLARENT BELT**

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**THE KINGDOM OF AGLOVALE**

APPLICANT

v.

**THE STATE OF RAGNELL**

RESPONDENT

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**MEMORIAL *for the* RESPONDENT**

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## STATEMENT OF JURISDICTION

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The State of Ragnell, by an application pursuant to Article 40(1) of the Statute of the International Court of Justice, instituted proceedings against the Kingdom of Aglovale with regard to disputes concerning alleged violations of international law by the Kingdom of Aglovale and invoked the compromissory clause of the Trilateral Treaty of Lasting Peace.

On 30 August 2022, the Parties jointly notified to the Court a Statement of Agreed Facts. Ragnell undertakes to accept the judgement of this Court as final and binding, and shall execute it in its entirety and in good faith.

## QUESTIONS PRESENTED

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### I

*Whether* 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?

### II

*Whether* 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?

### III

*Whether* 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?

### IV

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

## STATEMENT OF FACTS

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The Kingdom of Aglovale, the State of Ragnell and the Federation of Balan are neighbouring countries in the Gais Peninsula. The Clarent Belt, universally considered to be a part of Balan's jurisdiction until the 1950s, stretches between the Dozmary Sea and Aglovale. The Tintagel Coast is the only habitable area in the Belt.

Aglovale and Balan agreed to construct the Eamont Thruway which connected the Tintagel port located in the Coast with the transportation infrastructure in Aglovale. The Thruway and the port were extensively utilized by Aglovalean which made it a major hub for trade. This led to a decline in the revenue of Ragnellian ports, leading to heightened tensions in the Peninsula.

In October 1951, an explosion killed the executive director and five others of Balan's port authority. Balan attributed the attack to Ragnell and increased its military presence in the Belt. Ragnell responded by deploying its military forces at the border, which led to a rapid escalation of regional tensions. In June 1952, the Clarent War broke out and as the conflict continued, Ragnell seized the seaport, nationalized the Park's factories, rapidly restored those that had been damaged and established control over the Belt.

Aglovale convened peace talks between Ragnell and Balan and The Trilateral Treaty of Lasting Peace was signed in 1958. The parties committed to demilitarization of the Belt, termination of hostilities and restoration of amicable relations. Ragnell was granted a 65-year lease over the Belt and was authorized to maintain public order and government services. The sovereignty over the Belt remained with Balan. It also recognized Aglovale's unimpeded use of the Thruway and the seaport.

A group of Balani military veterans, dissatisfied with the Treaty, formed Unityk Ai Chyvon ("*UAC*"). Subsequently, UAC expanded its activities from organizing annual protests and marches across Balan to establishing veteran and student societies focused on social activism. Additionally, they launched awareness programs to emphasize the significance of the Belt to Balan.

The Ragnellian Progressive Party (RPP) was founded in 1967 with the purpose of safeguarding Ragnell's interests in the Belt. The Plastics Conglomerate, a private Ragnellian

enterprise was established to process plastic waste. Over the next few years, Aglovale upgraded the Nant Gateway, the sole tunnel mouth of the Thruway.

Balan ratified the Basel and Stockholm Conventions to enhance domestic environmental protection regulations. Aglovale and Ragnell are not parties to these Conventions, however, they have enacted legislation to promote environmental protection through domestic measures.

Dan Vortigern was elected as the President of Ragnell in 2018 and vouched to protect Ragnellian interests in the Belt. UAC membership increased in Balan and they called upon Balanis to condemn any effort by Ragnell to cancel withdrawing from the Belt. Their strategy transitioned from informational campaigns to physical and cyber-attacks against factories owned by Ragnellians.

Over the following years, the UAC attacks increased, prompting Ragnell to request Balan to take effective measures. Consequently, Balan conducted police raids on UAC clubs in Balani cities, seized firearms and other contraband from commercial vehicles entering the Belt and arrested members involved in the attacks. Aglovale's monitoring forces reported that UAC carried out 233 raids between 2019 and 2021.

In July 2020, Vortigern stated in a press conference that if Balan cannot or will not undertake action to protect property and lives, then he would. The Balani PM condemned UAC's vicious attacks as well. On 7<sup>th</sup> July 2021, UAC attacked three Ragnellian factories in the Belt, killing 50 employees. Due to these attacks, Vortigern launched Operation Shining Star to wipe out UAC terrorist cells and to save lives and restore regional prosperity.

A UN Security Council meeting was convened at Aglovale's request. Intelligence via representatives of four states claimed that the impetus for Ragnell's intervention was to create a pretext justifying withdrawal from the Treaty. However, the resolution was vetoed by three permanent members.

Ragnell captured and detained over 400 UAC fighters in Fort Caerleon and provided them with basic food and shelter. A UAC attack rendered one of the two main waste treatment plants inoperative. This resulted in the accumulation of plastic and medical waste. On 12<sup>th</sup> December

2021, Ragnell and Aglovale initiated negotiations for a waste transfer agreement but could not achieve consensus.

On 20<sup>th</sup> December 2021, the Thruway was declared a humanitarian corridor and Balani citizens were evacuated from the Belt by Balan. Ragnell received reliable intelligence from Etna that dozens of UAC fighters were utilizing the Thruway to launch an attack on Ragnell's forces. Consequently, Ragnell bombed the Nant Gateway which led to the death of 30 UAC fighters. There were no civilian casualties.

Subsequently, Aglovale cancelled the waste transfer negotiations and would resume them only if Ragnell ceased all military activity in the Belt. On 20<sup>th</sup> January 2022, Ragnell entered into a waste disposal agreement with Etna, a party to the Basel and Stockholm Conventions. The agreement was transmitted to the Conventions' Secretariat. The transport of waste began on 24<sup>th</sup> January and lasted for a month. Due to a limited number of Ragnellian workers in the Belt, Ragnell ordered UAC detainees to load the waste onto the ships. The detainees were paid wages and provided with basic safety gear.

A report released by the International Landfill Solutions Alliance stated that Etna's treatment facilities were not equipped to handle the large shipments of waste. Etna, however denied these allegations. Ragnell's stated that keeping the waste in the Belt would have posed a higher risk and that the agreement with Etna was the only option open to them.

Ragnell received information from a Balani worker that Compound Ardan was being utilized by UAC fighters to launch attacks. The informant provided the military with a map and photos that showed UAC activity. On 7 March 2022, Ragnell's military authorized a bombing raid based off this intelligence and drone footage that they had collected. The attack resulted in the death of 68 Balani women and children, and 8 Aglovalean aid workers who were hiding in the Compound. An investigation revealed that the informant had limited access to the Compound and had a history of supplying erroneous and misleading intelligence. The informant's handlers were dishonourably discharged for relying on such evidence.

In March 2022, Ragnell announced the transfer of UAC detainees to Camlann Correctional Center. On 15<sup>th</sup> April 2022, Ragnell's parliament adopted a resolution to not begin discussions for

withdrawal from the Belt. A week later, Aglovale and Balan issued a statement repudiating Ragnell's attacks and demanded the release of detained Balani citizens.

Aglovale's Parliament imposed unilateral sanctions on Ragnell and also seized Prydwen Place, belonging to a Ragnellian citizen who was attempting to circumvent sanctions by leveraging his relationships with third-country nationals.

Balan demanded the initiation of negotiations in accordance with the Treaty. Ragnell conditioned the discussion upon certain demands. Balan rejected them by stating that they were unjustified and inconsistent with the Treaty.

In June 2022, the parties to the Treaty entered into negotiations to resolve their disputes. Failing to reach a consensus, Ragnell filed an Application with the Registry of the International Court of Justice and instituted proceedings against Aglovale. In response, Aglovale filed counterclaims and the parties stipulated that Aglovale would appear as Applicant and Ragnell as Respondent.

## SUMMARY OF PLEADINGS

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### I

The State of Ragnell's launch of Operation Shining Star and its subsequent attacks on Nant Gateway and Compound Ardan did not violate its obligations under the Trilateral Treaty. Preliminarily, because the International Court of Justice cannot exercise its jurisdiction in certain issues of the case. In any event the launch of Operation Shining Star did not violate the Treaty. First, because Ragnell was permitted to use self-defensive force against UAC attacks as it fulfilled the conditions of lawful use of force. Second, because the targeted attacks on Compound Ardan and Nant Gateway were lawful as they were legitimate military objectives and fulfilled the conditions of necessity and proportionality. Furthermore, the military advantage from launching these attacks exceeded the incidental civilian damage; thereby, absolving Ragnell of any liability. Alternatively, any wrongfulness by Ragnell would be precluded by its use of lawful self-defensive force. Consequently, Ragnell will not be under any obligation to compensate Aglovale.

### II

Regarding Ragnell's temporary employment of UAC POWs in the transportation of plastic waste and their subsequent detention in Camlann Correctional Center, Ragnell submits that these actions were in accordance with its obligations under the Treaty. The UAC members detained by the Ragnellian military are granted rights and protections under the Third Geneva Convention as well as general principles of international human rights law. Alternatively, Ragnell's actions were in accordance with the Fourth Geneva Convention should the UAC members not qualify as POWs. Ragnell submits that employment of UAC detainees in the transport plastic waste complied with Treaty obligations. First, the employment of POWs did not constitute forced labour. Second, it qualified as authorized work. Third, the employment complied with international standards of safe working conditions. Furthermore, the temporary detainment of UAC members in Camlann Correctional Center was necessary to remove them from areas of active combat and their treatment exceeded international standards.

### III

With regards to the unilateral sanctions imposed on Ragnellian entities, Ragnell submits that these sanctions were unlawful. First, because they are devoid of any customary basis, violated Aglovale's Treaty obligations, the principle of non-intervention in the *domain reserve* of Ragnell and the law of jurisdictional immunities. Second, because Aglovale does not have the legal prerogative to impose countermeasures nor do they qualify as countermeasures precluding wrongfulness as they are not necessary and proportionate. The sanctions also adversely affected Aglovale's obligation for the protection of fundamental human rights. The unlawful nature of these sanctions places an obligation upon Aglovale to immediately withdraw the sanctions and pay reparations *qua* restitution and compensation.

### IV

Finally, Ragnell submits that Aglovale's refusal to cooperate in the management of the plastic waste violated its environmental obligations under the Treaty. First, because it failed to take the necessary steps on Ragnell's reasonable request. Second, because Aglovale cannot preclude wrongfulness by deeming their non-performance as a lawful countermeasure and nor can they justify it by a plea of *exceptio non adimpleti contractus*. Third, because Aglovale failed to observe good faith by not performing its obligations under the Treaty. On the other hand, Ragnell complied with its obligations by exporting the waste to Etna. First, because Ragnell is not liable for transboundary harm. Second, because it observed due diligence and environmentally sustainable management in exporting the waste. Alternatively, Ragnell's obligation and necessity to reduce the impact of significant environmental harm precludes wrongfulness.

## PLEADINGS

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### **I. THE INITIATION OF OPERATING SHINING STAR AND THE TARGETTING OF NANT GATEWAY AND COMPOUND ARDAN WERE IN CONFORMITY WITH THE TREATY, AND DO NOT GIVE RISE TO ANY OBLIGATION TO COMPENSATE.**

Ragnell was responsible under the Trilateral Treaty of Lasting Peace (“*Treaty*”) to maintain peace and order in the Clarent Belt.<sup>1</sup> Due to the escalation of UAC attacks in the Belt,<sup>2</sup> coupled with Balan’s failure in combatting UAC aggression,<sup>3</sup> Ragnell had the prerogative to launch Operation Shining Star (“*OSS*”) as a means of self-defence against the destruction of property and loss of civilian life in the Belt.<sup>4</sup>

At present, **(A)** the ICJ cannot exercise its jurisdiction to adjudicate in certain matters of the case. *In any event*, Ragnell did not violate its Treaty obligations as **(B)** Operation Shining Star was launched as a measure of self-defence; **(C)** Compound Ardan and Nant Gateway were legitimate military objectives; **(D)** the lawful use of force by Ragnell precluded any wrongfulness and did not constitute Treaty violations; and **(E)** Ragnell’s actions would not give rise to any obligation for it to compensate.

### **A. THE ICJ CANNOT EXERCISE ITS JURISDICTION TO ADJUDICATE IN CERTAIN MATTERS OF THE CASE.**

Courts are precluded from adjudicating upon matters where the legal interests of a third state, not a party to the case, form their core subject matter.<sup>5</sup> In the present case, Issues I and II involve the rights and obligations of the Federation of Balan, whereas Issue IV pertains to the

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<sup>1</sup> The Trilateral Treaty of Lasting Peace [*hereinafter*, “*Treaty*”], Art. 11(c).

<sup>2</sup> Statement of Agreed Facts [*hereinafter*, “*SAF*”], ¶ 26, 30.

<sup>3</sup> *Id.*, ¶ 26, 28, 35.

<sup>4</sup> *Id.*, ¶ 31; Clarifications, ¶ 3.

<sup>5</sup> Monetary Gold Removed from Rome in 1943, Preliminary Question, 1954, I.C.J. 19, pp. 32-33 (June 15); East Timor (Port. v. Austl.), Judgement, 1995 I.C.J. 90, ¶¶ 26-27 (June 30); Continental Shelf (Libyan Arab Jarnahiriyyu/Malta), Application for Permission to Intervene, Judgement, 1984 I.C.J. 3, ¶ 40 (Mar. 21); Martins Paporinskis, *Long Live Monetary Gold \*Terms and Conditions Apply*, 115 AJIL UNBOUND 154–159 (2021).

rights and obligations of Etna, both of whom are not parties to the present proceedings.<sup>6</sup> In assessing the lawfulness of OSS, and the capture and detention of UAC fighters, the Court would need to determine the scope of Balan's obligations in the Belt.<sup>7</sup> Furthermore, in determining the obligations arising from the transboundary disposal of waste, the Court would be required to interpret the obligations under the bilateral agreement signed with Etna.<sup>8</sup> Therefore, the absence of Balan and Etna as parties to the present case, along with their vital interests in certain issues before this Court, precludes this Court from exercising its jurisdiction in these issues.

## **B. OPERATION SHINING STAR WAS LAUNCHED AS A MEASURE OF SELF-DEFENCE.**

Ragnell launched OSS in response to terrorist attacks carried out by UAC in the Belt, resulting in significant destruction of Ragnellian factories and civilian casualties.<sup>9</sup> This action was justifiable as a means of self-defence, as **(1)** Ragnell was permitted to use force for self-defence in the Belt; and **(2)** the use of force was lawful.

### **1. Ragnell was permitted to use self-defensive force in the Clarent Belt.**

Ragnell invoked Art. 51 of the UN Charter to justify the launch of OSS as a means of self-defence against UAC aggression in the Belt.<sup>10</sup> This course of action was lawful as **(i)** Ragnell had the right to use self-defensive force in response to an armed attack by UAC; and **(ii)** the inability of Balan to counter UAC aggression further permitted Ragnell's use of self-defensive force.

- i. Ragnell had the legal prerogative to utilise self-defence in response to an armed attack by UAC.*

Ragnell was justified in using self-defensive force against UAC, even though it is a non-

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<sup>6</sup> SAF, ¶ 62.

<sup>7</sup> Treaty, Art. 11.

<sup>8</sup> SAF, ¶ 44; Caroline Laly-Chevalier, *Article 35 of the 1969 Vienna Convention*, in *THE VIENNA CONVENTIONS ON THE LAW OF TREATIES: A COMMENTARY* 915 (Olivier Corten & Pierre Klein eds., 2011); Sir H. Waldock, Third Report on the Law of Treaties, U.N. Doc. A/CN.4/167, p. 18 (1964).

<sup>9</sup> SAF, ¶ 30.

<sup>10</sup> SAF, ¶ 31; Clarifications, ¶ 3.

state actor (“NSA”). States have the right to defend themselves against an ‘armed attack,’ regardless of the perpetrator.<sup>11</sup> This is supported by a growing trend in state practice,<sup>12</sup> as well as its recognition by organizations such as NATO, EU, and the UNSC, which has established a customary rule allowing for self-defence against NSAs.<sup>13</sup> The terrorist attacks carried out by UAC resulted in severe harm to both civilians and property,<sup>14</sup> and were of significant gravity to qualify as an ‘armed attack.’<sup>15</sup> Thus, the escalating and severe nature of these attacks permitted Ragnell to use self-defensive force against UAC in the Belt.

ii. *Balan’s inability or unwillingness to counter UAC aggression enabled Ragnell to utilise self-defensive force against the UAC.*

States have the duty to prevent their territory from being used for subversive actions, particularly against the rights of other states.<sup>16</sup> In this case, UAC’s acts of terrorism in the Belt required Balan to take appropriate measures to stop UAC aggression. Ragnell repeatedly urged

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<sup>11</sup> Charter of the United Nations, 1945, 1 U.N.T.S. XVI [*hereinafter*, “U.N. Charter”], Art. 51; S.C. Res. 1373 (Sept. 28 2001); S.C. Res. 1368 (Sept. 12 2001); ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT (1995); Armed Activities on the Territory of the Congo (Dep. Rep. Congo v. Uganda), Judgement, Separate Opinion of Judge Koojimans, 2005 I.C.J. 306, ¶ 25 (Dec. 19); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, Separate Opinion of Judge Higgins, 2004 I.C.J. 207, ¶ 33 (July 9).

<sup>12</sup> Daniel Bethlehem, *Self-Defense Against Imminent or Actual Armed Attack by Nonstate Actors*, 106 AM. J. OF INT’L L. 770 (2012).

<sup>13</sup> Statement by the NATO Secretary-General, 2001, 40 I.L.M. 1268; Council of the EU, 2372<sup>nd</sup> Council Meeting - General Affairs, pp. 6-7 (9 October 2001); Letter dated 7 October 2001 from the Permanent Representative of the USA, U.N. Doc. S/2001/946; Antonio Cassese, *Terrorism is also Disrupting some Crucial Legal Categories of International Law* 12 EUR. J. INT’L L. 993 (2001); G.A. Res. No 2625 (XXV) (Oct. 24 1970).

<sup>14</sup> SAF, ¶ 26, 30.

<sup>15</sup> United States Diplomatic and Consular Staff in Tehran (Iran v. United States of America), Judgement, 1980 I.C.J. 3 (May 24) [*hereinafter*, “Tehran Hostages”], ¶ 58, 64; Judge Koojimans, *supra* note 11, ¶ 32; Jus ad Bellum – Ethiopia’s Claims 1-8 (Eth. v. Eri.), Partial Award, XXVI U.N.R.I.A.A. 457-469 (2005); IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 27 (1963); Oil Platforms (Iran v. U.S.), Judgement, 2003, I.C.J. 161 (Nov. 6) [*hereinafter*, “Oil Platforms”], p. 192.

<sup>16</sup> Tehran Hostages, ¶ 56-68; Corfu Channel (U.K. v. Alb.), Judgement, 1949 I.C.J. 4 (Apr. 9) [*hereinafter*, “Corfu Channel”], pp. 22-23; Hum. Rts. Comm, 37<sup>th</sup> Sess., U.N. Doc. A/37/40, General Comment 6 (1982).

Balan to put an end to UAC's violence in the Belt,<sup>17</sup> however Balan's inability to gain control of the situation led to escalating hostilities in the Belt.<sup>18</sup> In circumstances where states are unable or unwilling to counter armed aggression, the affected state has the right to use extra-territorial force in self-defence.<sup>19</sup> This is predominantly evidenced by historical state practice,<sup>20</sup> particularly, in US military's actions against Al-Qaeda in Afghanistan,<sup>21</sup> Israel's invasion of Lebanon to neutralize the PLO,<sup>22</sup> and Russia's conflict with the Chechen insurgency in Georgia.<sup>23</sup> Therefore, Balan's inability to counter UAC aggression empowered Ragnell the right to launch OSS as a measure of self-defence to neutralize UAC aggression.

## **2. The use of force by Ragnell was lawful in nature.**

The use of force in self-defence must be proportional to the armed attack and necessary to respond to it.<sup>24</sup> In this case, Ragnell's use of force under OSS was lawful, as it **(i)** used necessary and proportionate force, and **(ii)** adhered to the UN Charter's requirements.

### *i. Ragnell used necessary and proportionate force under Operation Shining Star.*

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<sup>17</sup> SAF, ¶ 26, 27.

<sup>18</sup> *Id.*, ¶ 28, 35.

<sup>19</sup> Ashley S. Deeks, "Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense 52 VA. J. OF INT'L L. 483, p. 499 (2012); Gareth D. Williams, *Piercing the Shield of Sovereignty: An Assessment of the Legal Status of the "Unwilling or Unable" Test*, 36(2) U. N.S.W. L.J. 619, p. 625 (2013); YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENSE 216 (5th ed. 2011); NOAM LUBELL, EXTRATERRITORIAL USE OF FORCE AGAINST NON-STATE ACTORS 42 (2010); A Randelzhofer, *Article 51*, in THE CHARTER OF THE UNITED NATIONS, A COMMENTARY 661-678, 673 (Simma et al. eds., 1994).

<sup>20</sup> See *supra* note 13.

<sup>21</sup> Letter dated 20 August 1998 from the Permanent Representative of the USA, U.N. Doc. S/1998/780.

<sup>22</sup> UN Security Council, 2071<sup>st</sup> Meeting, U.N. Doc. S/PV.2071 (Mar. 17 1979).

<sup>23</sup> Annex to the Letter dated 31 July 2002 from the Chargé d'affaires of the Russian Federation, U.N. Doc. S/2002/854.

<sup>24</sup> Oil Platforms, ¶ 77; Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Judgement, 1986 I.C.J. 14 (June 27) [*hereinafter*, "Nicaragua"], ¶ 176; Armed Activities on the Territory of the Congo (Dep. Rep. Congo v. Uganda), Judgement, 2005 I.C.J. 306 (Dec. 19) [*hereinafter*, "Armed Activities"], ¶ 147; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 207 (July 9) [*hereinafter*, "Wall Advisory Opinion"], ¶ 76.

The use of force under OSS was necessary to restore peace and stability in the Belt. Ragnell repeatedly called upon Balan to take appropriate measures to prevent further UAC violence,<sup>25</sup> but these efforts failed and UAC attacks rapidly escalated with civilian casualties.<sup>26</sup> Consequently, Ragnell was compelled to use extra-territorial force to neutralize UAC terrorists in the Belt.<sup>27</sup>

Furthermore, the use of force used under OSS was proportionate to its broader objective of neutralizing UAC targets and restoring peace in the Belt. Under *jus ad bellum*, proportionality is interpreted to preserve the victim's rights, including restoring stability in the wake of terrorist attacks.<sup>28</sup> The force used under OSS was only used to combat or respond to UAC attacks.<sup>29</sup> Considering the significant civilian casualties and damage to infrastructure caused by UAC raids, the force used by Ragnell through the OSS is manifestly proportionate.

ii. *Ragnell complied with the UN Charter's notice requirement.*

Article 51 of the UN Charter further requires states invoking their inherent right to self-defence to immediately inform the Security Council of any planned actions.<sup>30</sup> Prior to launching the OSS, Ragnell officially informed the Security Council, stating that the operation was a response to UAC armed attacks and aimed to restore peace and stability in the Belt.<sup>31</sup>

### **C. THE FORCE USED BY RAGNELL IN ITS TARGETED ATTACKS WAS LAWFUL.**

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<sup>25</sup> SAF, ¶ 26, 27.

<sup>26</sup> *Id.*, ¶ 25, 30.

<sup>27</sup> *Id.*, ¶ 31; Judge Koojimans, *supra* note 11; ROBERT JENNINGS ET AL. (EDS.), OPPENHEIM'S INTERNATIONAL LAW: VOLUME I 419 (2008).

<sup>28</sup> *See supra* note 24; JUDITH GARDAM, NECESSITY, PROPORTIONALITY AND THE USE OF FORCE BY STATES (2004); CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE 121 (2nd ed. 2004).

<sup>29</sup> KEIICHIRO OKIMOTO, THE DISTINCTION AND THE RELATIONSHIP BETWEEN *JUS AD BELLUM* AND *JUS IN BELLO* 74 (2011); John N. Moore, *Jus ad Bellum before the International Court of Justice*, 52 VIRGINIA J. INT'L L. 903, pp. 941-942 (2012); Rein Müllerson, *Self-defence against Armed Attacks by Non-State Actors*, 18(4) CHINESE J. OF INT'L L. 751, p. 774 (2019); David Kretzmer, *The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum* 24(1) EUR. J. INT'L L. 235 (2013).

<sup>30</sup> U.N. Charter, Art. 51.

<sup>31</sup> SAF, ¶ 31; Clarifications, ¶ 3.

As an international armed conflict (“IAC”) existed between UAC and Ragnell after the launch of OSS, the principles of international humanitarian law (“IHL”) apply in determining their conduct in the conflict.<sup>32</sup> Parties are required to follow the principles of necessity, proportionality, and distinction between civilian and military targets.<sup>33</sup> Additionally, military necessity requires the use of force to be urgent, for the attainment of a known military goal, and to comply with IHL.<sup>34</sup> In this regard, Ragnell fulfilled their obligations by conducting lawful strikes on (1) Nant Gateway and (2) Compound Ardan.

### **1. Ragnell’s military attack on Nant Gateway was lawful under IHL.**

In order for a target to be considered legitimate, it must provide a definite military advantage for the attacking party, while also undermining the enemy’s capabilities.<sup>35</sup> In this case, the attack on Nant Gateway resulted in the death of 30 UAC terrorists without any civilian casualties.<sup>36</sup> Not only did the attack directly neutralize UAC targets, but it also offered Ragnell a

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<sup>32</sup> Clarifications, ¶ 7; International Law Association, *Final Report on the Meaning of Armed Conflict in International Law* (Aug. 2010); Dapo Akande, *Classification of Armed Conflicts: Relevant Legal Concepts*, in INTERNATIONAL LAW AND THE CLASSIFICATION OF CONFLICTS 32, pp. 73-75 (E. Wilmschurts ed. 2012); K. Fortin, *Unilateral Declaration by Polisario under API accepted by Swiss Federal Council*, ARMED GRP. INT’L L. BLOG (2015).

<sup>33</sup> Nobuo Hayashi, *Requirements of Military Necessity in International Humanitarian Law and International Criminal Law* 28 Bos. U. INT’L L. J. 39, p. 76 (2010); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, 75 U.N.T.S. 287 [*hereinafter*, “GC IV”], Art. 53, 147.

<sup>34</sup> ICRC, INTERNATIONAL HUMANITARIAN LAW AND THE CHALLENGES OF CONTEMPORARY ARMED CONFLICTS, ¶ 45, 143, 177 (2015); STANIMIR A. ALEXANDROV, SELF-DEFENSE AGAINST THE USE OF FORCE IN INTERNATIONAL LAW (1996); LUBELL, *supra* note 19, p. 35 (2010).

<sup>35</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, 1125 U.N.T.S. 3 [*hereinafter*, “AP I”], Art. 48, 52(2); DIETRICH SCHINDLER & JIRI TOMAN, THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS 91 (4th ed. 2004).

<sup>36</sup> SAF, ¶ 41; Clarifications, ¶ 4.

strategic advantage, as the Eamont Thruway could no longer be used to smuggle arms or transport UAC insurgents into the Belt.<sup>37</sup> Therefore, Nant Gateway was a legitimate military target.

Additionally, Ragnell's attack on Nant Gateway was necessary to prevent an imminent attack by UAC.<sup>38</sup> States are not expected to remain passive in the face of threats to their existence and have the right to anticipatory self-defence, which has been endorsed by state practice and judicial authorities.<sup>39</sup> At the time, a surprise attack from UAC fighters on Ragnell's armed forces was imminent, necessitating Ragnell to use force to prevent an escalation of violence in the Belt.

Moreover, Ragnell's attack on Nant Gateway was proportionate as it was aimed at preventing an imminent attack and blocking further reinforcements being smuggled through the Thruway.<sup>40</sup> Ragnell adhered to its duty of care and precaution, and provided sufficient notice to Balan prior to the attack ensuring the lack of civilian casualties.<sup>41</sup> Therefore, the targeted military strike on Nant Gateway was proportionate.

## **2. Ragnell's military attack on Compound Ardan was lawful under IHL.**

Ragnell's bombing of Compound Ardan was justified as it had been converted into a stronghold for the UAC, from which ground attacks were launched against Ragnell.<sup>42</sup> Enemy bases

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<sup>37</sup> ICTY, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, ¶¶ 62-79 (2000); Prosecutor v. Kupreškić, IT-95-16-T, Judgement (Int'l Crim. Trib. For the Former Yugoslavia Jan. 14 2000) [*hereinafter*, "Kupreškić Judgement"], ¶ 526.

<sup>38</sup> *See supra* note 36.

<sup>39</sup> KINGA TIBORI SZABÓ, ANTICIPATORY ACTION IN SELF-DEFENCE 94 (2014); GRAY, *supra* note 28, p. 157; Anne Slaughter & William Burke-White, *An International Constitutional Moment* 43 Harv. Int'l L.J. 1, p. 3 (2002); CHATHAM HOUSE, PRINCIPLES OF INTERNATIONAL LAW ON THE USE OF FORCE BY STATES IN SELF-DEFENCE 32 (2005); Oscar Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, p. 1634 (1984).

<sup>40</sup> SAF, ¶ 41; AP I, Art. 51(5)(b), 85(3)(b); JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 51 (2005).

<sup>41</sup> *See supra* note 36; AP I, Art. 57(1); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977, 1125 U.N.T.S. 609 [*hereinafter*, "AP II"], Art. 13(1); Kupreškić Judgement, ¶ 524; Prosecutor v. Prlić, IT-04-74-T, Judgement (Int'l Crim. Trib. For the Former Yugoslavia May 29 2013), § I(B).

<sup>42</sup> SAF, ¶ 47.

and ammunition depots are universally considered as legitimate military targets and thus, an attack on the Compound is *prima facie* lawful.<sup>43</sup> Further, the attack was also proportionate as the direct military advantage gained outweighed collateral civilian casualties.<sup>44</sup> The bombing resulted in the death of several UAC terrorists and the destruction of vital UAC caches, which provided a concrete and direct military advantage.<sup>45</sup> Thus, the successful elimination of vital military targets outweighed collateral civilian casualties, making it a proportionate use of force.

Moreover, Ragnell honestly and reasonably believed that Warehouse 15 in Compound Ardan was being used by the UAC as an ammunition depot, making it a legitimate military objective.<sup>46</sup> In accordance with its obligations pertaining to the duty of care,<sup>47</sup> Ragnell conducted aerial surveillance and used on-ground intelligence to verify the same.<sup>48</sup> The FCJ has previously ruled that similar actions by NATO in bombing fuel-tankers captured by the Taliban which resulted in collateral civilian casualties was lawful as it took reasonable precautions and civilian presence was not reasonably foreseeable.<sup>49</sup> Similarly, as Ragnell had no reasonable evidence of civilians hiding in the stronghold, and had taken all reasonable measures to verify its intelligence, it cannot be held liable for the collateral deaths of civilians.

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<sup>43</sup> See *supra* note 35; YORAM DINSTEIN, *THE CONDUCT OF HOSTILITIES UNDER INTERNATIONAL LAW* 88 (2004); Adv. Gen., *The Law of Armed Conflict at the Operational and Tactical Levels*, § 407.1-2 (2001) (Can.); Letter dated 13 February 1991 from the Permanent Representative of the UK, UN Doc. S/22218; N.Z. Def. Forces, *Interim Law of Armed Conflict Manual*, § 516(2) (1992).

<sup>44</sup> D. Tharer, *International Humanitarian Law: Theory, Practice, Context* 338 RDC 9, p. 74 (2008); HENCKAERTS & DOSWALD-BECK, *supra* note 40; Stefan Oeter, *Methods and Means of Combat*, in *THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW* 186 (Dieter Fleck ed., 2008); William Fenrick, *Attacking the Enemy Civilian as a Punishable Offense* 8 DUKE J. COMP. & INT'L L. 539, p. 548 (1997); ICTY, *supra* note 37.

<sup>45</sup> Clarification, ¶ 8.

<sup>46</sup> Asaf Lubin, *The Reasonable Intelligence Agency* 47(1) YALE J. OF INT'L L. 119 (2021); Marko Milanovic, *Mistakes of Fact When Using Lethal Force in International Law: Part I*, EJIL: TALK! (Jan. 14 2020), <https://www.ejiltalk.org/mistakes-of-fact-when-using-lethal-force-in-international-law-part-i>.

<sup>47</sup> See *supra* note 41.

<sup>48</sup> SAF, ¶ 47.

<sup>49</sup> Bundesgerichtshof [BGH] [Federal Court of Justice], Oct. 6, 2016, III ZR 140/15 46 (Ger.).

**D. THE LAWFUL USE OF FORCE BY RAGNELL PRECLUDED ANY WRONGFULNESS AND TREATY VIOLATIONS ON THEIR PART.**

Ragnell’s use of force in launching OSS and its subsequent military attacks precludes the violation of its obligations under the Treaty.<sup>50</sup> Self-defence justifies any potential breaches of collateral legal commitments caused by the lawful use of force,<sup>51</sup> and rules out wrongfulness for treaty breaches.<sup>52</sup> In the present case, the explicit utilisation and compliance of Art. 51 by Ragnell,<sup>53</sup> in employing lawful force precludes any wrongfulness arising out of Treaty breaches. Thus, Ragnell cannot be held liable for violating any Treaty obligations.

**E. RAGNELL’S ACTIONS WOULD NOT GIVE RISE TO ANY OBLIGATION FOR IT TO COMPENSATE.**

States are only obligated to pay reparations when they, *inter alia*, conduct an internationally wrongful act.<sup>54</sup> The use of force by Ragnell in OSS and its subsequent military attacks was lawful, precluding it from any breaches under the Treaty.<sup>55</sup> Therefore, Ragnell’s action does not qualify as an internationally wrongful act, and it would not be under an obligation to compensate Aglovale.

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<sup>50</sup> See *supra* § I(B), (C).

<sup>51</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8) [*hereinafter*, “Nuclear Weapons Advisory Opinion”], ¶ 97; Federica I. Paddeu, *Self-Defence as a Circumstance Precluding Wrongfulness: Understanding Article 21 of the Articles on State Responsibility*, 85 BRIT. Y.B. INT’L L. pp. 90–132 (2014).

<sup>52</sup> Jean-Marc Thouvenin, *Circumstances Precluding Wrongfulness in the ILC Articles on State Responsibility: Self-Defence*, in THE LAW OF INTERNATIONAL RESPONSIBILITY, pp. 455–467 (2013); Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the ILC at its 53rd Sess., annexed to G.A. Res. 56/83, U.N. Doc. A/RES/56/83 (2001) [*hereinafter*, “ARSIWA”], Art. 21; Draft Articles on Responsibility of States for Internationally Wrongful Act with Commentaries, adopted by the ILC at its 53rd Sess., U.N. Doc. A/56/10 (2001) [*hereinafter*, “ARSIWA Commentaries”], ¶¶ 1-3 of Art. 21.

<sup>53</sup> Clarifications, ¶ 3; Randelzhofer, *supra* note 19; V. Upeniece, *Conditions for the Lawful Exercise of the Right of Self-Defence in International Law*, 40 SHS WEB OF CONFERENCES (2018).

<sup>54</sup> ARSIWA, Art. 34; Factory at Chorzów (Ger. v. Pol.), Judgment, 1928 P.C.I.J. (Ser. A) No. 5 (Sept. 13) [*hereinafter*, “Factory at Chorzów”], p. 29; Gabčíkovo-Nagymaros Project (Hung./Slovk.), Judgment, 1997 I.C.J. Reports 7 (Sept. 25) [*hereinafter*, “Gabčíkovo-Nagymaros Project”], ¶ 115.

<sup>55</sup> See *supra* § I(B), (C), (D).

## II. RAGNELL ACTED IN ACCORDANCE WITH THE TREATY IN TEMPORARILY EMPLOYING UAC DETAINEES IN THE TRANSPORT OF PLASTIC WASTE TO ETNA, AND IN TEMPORARILY TRANSFERRING THEM TO CAMLANN CORRECTIONAL CENTER.

The Treaty obligates parties to uphold the principles of IHL and commit to safe environmental practices.<sup>56</sup> The UAC detainees were paid commensurate wages with the nature of their employment and their treatment exceeded relevant international standards.<sup>57</sup> Ragnell has not violated the Treaty as: (A) its actions were in accordance with protection accorded to UAC; (B) the temporary employment of UAC fighters to transport plastic waste was not unlawful; (C) the temporary transfer of UAC fighters to Camlann Correctional Center was in accordance with the Treaty; and (D) *in any event*, Aglovale’s claim on behalf of UAC detainees is premature.

### A. RAGNELL’S ACTIONS WERE IN ACCORDANCE WITH THE PROTECTION ACCORDED TO UAC FIGHTERS.

The UAC fighters are accorded protections under IHL and human rights law. Human rights law is a *lex generalis* regime that guarantees the rights of individuals in their everyday interaction with the state.<sup>58</sup> Conversely, IHL is a *lex specialis* regime that governs the use of force by states during armed conflicts. *Lex specialis* and *lex generalis* regimes should be interpreted harmoniously wherever feasible.<sup>59</sup> The UAC fighters captured and detained by Ragnell in Fort Caerleon are entitled to Prisoner of War (“POW”) status along with its inherent protections under the Third Geneva Convention (“GC III”). Members belonging to an organized resistance movement, such as UAC, are accorded POW status.<sup>60</sup> In the present case, Ragnell’s actions were in accordance

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<sup>56</sup> Treaty, Art. 2(2), 28.

<sup>57</sup> SAF, ¶ 36, 44.

<sup>58</sup> Heike Krieger, *A Conflict of Norms: The Relationship between Humanitarian Law and Human Rights Law in the ICRC Customary Law Study*, 11 J. CONFL. & SEC. L. ¶ 265 (2006).

<sup>59</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the International Law Commission*, 2006, UN Doc. A/CN.4/L.682, ¶ 4.

<sup>60</sup> Geneva Convention Relative to the Treatment of Prisoners of War, 1949, 75 U.N.T.S. 135 [*hereinafter*, “GC III”], Art. 4(A)(2); AP I, Art. 44(3) (outlining the presumption of POW status as long as combatants carry arms openly and

with both IHL and human rights law.<sup>61</sup> Thus, the UAC fighters are accorded POW status and Ragnell acted in compliance with the protections available to them.

*In any event*, Ragnell’s employment of UAC fighters and subsequent detention in the Center was in accordance with the protections under the Fourth Geneva Convention should the UAC detainees qualify as protected persons.<sup>62</sup>

## **B. THE TEMPORARY EMPLOYMENT OF UAC FIGHTERS WAS IN ACCORDANCE WITH THE TREATY.**

The Treaty requires parties to use their best practicable means to commit to the protection of human health.<sup>63</sup> In the present case, Ragnell’s employment of UAC detainees in the transportation of plastic waste was done to ensure compliance with the Treaty as: **(1)** the employment did not constitute forced labour; **(2)** the transportation of plastic waste was authorized piece of work; and **(3)** *in any event*, the employment of UAC detainees complies with international standards of safe working conditions.

### **1. The employment did not constitute forced labour under international law.**

Ragnell ordered the UAC detainees to transport the plastic waste that had accumulated in the Belt.<sup>64</sup> Services exacted through coercion, the threat of penalty, and without voluntary consent constitute forced labour.<sup>65</sup> It expressly excludes services exacted during an emergency that threaten

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in front of their adversaries) ; Sean Murphy, *Evolving Geneva Convention Paradigms in the ‘War on Terrorism’: Applying the Core Rules to the Release of Persons Deemed ‘Unprivileged Combatants’*, 75 GEO. WASH. L. REV. 1 (2007); SAF, ¶ 35; Clarifications, ¶ 7.

<sup>61</sup> International Covenant on Civil and Political Rights, 1966, 999 U.N.T.S. 171 [*hereinafter*, “ICCPR”] Art. 8(3)(b); Universal Declaration of Human Rights, 1948, U.N. Doc. A/810 [*hereinafter*, “UDHR”], Art. 23; International Covenant on Economic, Social and Cultural Rights, 1976, 993 U.N.T.S. 3 [*hereinafter*, “ICESCR”] Art. 6.

<sup>62</sup> GC IV, Art. 4; Ryan Goodman, *The Detention of Civilians in Armed Conflict*, 103 AM. J. OF INT’L L. (2009).

<sup>63</sup> Treaty, Art. 28.

<sup>64</sup> SAF, ¶ 44.

<sup>65</sup> GC III, Art. 49, 50, 52; ILO Forced Labour Convention, 1930, 39 U.N.T.S. 55, Art. 2(1); HENCKAERTS & DOSWALD-BECK, *supra* note 40, § 32, 33; Faure v. Australia, CCPR/C/85/D/1036/2001, Judgement (Hum. Rts. Comm. Oct. 31 2005).

the life or the well-being of the community.<sup>66</sup> The destruction of the main waste treatment plant in Tintagel Park coupled with Aglovale's refusal to process the waste created a state of emergency which threatened public safety and health.<sup>67</sup> Furthermore, a large number of Ragnellians had already left the Belt in fear of increasing hostilities.<sup>68</sup> In accordance with its Treaty obligations,<sup>69</sup> the best practicable option available was to employ UAC detainees to transport the waste accumulated in the Belt. Therefore, Ragnell's employment did not constitute forced labour.

## **2. The transportation of plastic waste qualified as an authorized piece of work.**

States are authorized to utilize the labour of POWs who are physically fit.<sup>70</sup> They are permitted to employ POWs in work of the nature of public utility services that primarily serve a civilian purpose.<sup>71</sup> The transport of plastic waste can be categorized as a public utility service as it served to protect the health of the civilians and prevent a public health calamity.<sup>72</sup> The accumulation of plastic waste posed a threat to the health and safety of the civilians as well as UAC members in the region. Furthermore, the UAC detainees who were unfit or ill were exempted from employment.<sup>73</sup> The employment did not serve any military purpose but merely sought to

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<sup>66</sup> ICCPR, Art. 8(3)(b); European Convention on Human Rights, 2010, 213 U.N.T.S. 221, Art. 4(3)(c) [*hereinafter*, "ECHR"]; Forced Labour Convention, Art. 2(d); GC IV, Art. 40.

<sup>67</sup> SAF, ¶ 38.

<sup>68</sup> SAF, ¶ 36.

<sup>69</sup> Treaty, Art. 28.

<sup>70</sup> ICRC, COMMENTARY ON THE THIRD GENEVA CONVENTION: CONVENTION (III) RELATIVE TO THE TREATMENT OF PRISONERS OF WAR (2021) [*hereinafter*, "ICRC Commentary on GC III"], ¶ 2694 of Art. 50; GC III, Art. 50.

<sup>71</sup> GC III, Art. 50(f) ; JEAN PICTET ET AL., COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949, VOL. III 268 (1960); Howard Levie S., *The Employment of Prisoners of War*, 57 AM. INT'L L. J. 2 (2013); GC IV, Art 40; ICRC, COMMENTARY ON THE FOURTH GENEVA CONVENTION: CONVENTION (IV) RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR (1958) [*hereinafter*, "ICRC Commentary on GC IV"] ¶ 254 of Art. 40.

<sup>72</sup> SAF, ¶ 38.

<sup>73</sup> Clarifications, ¶ 5.

prevent or remedy environmental pollution and harm.<sup>74</sup> In light of the above, Ragnell complied with its obligations under the Treaty.

### **3. The employment of UAC fighters complied with international standards of safe working conditions.**

Ragnell provided safe working conditions to the UAC detainees who were employed in the transportation of plastic waste. While states are obligated to provide suitable working conditions and equipment to POWs, these conditions must also not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work.<sup>75</sup> Further, individuals are guaranteed an inalienable right to just, safe and healthy working conditions.<sup>76</sup> In this regard, the UAC detainees were provided with basic safety gear that included gloves and masks to prevent exposure to plastic waste and safeguard their health.<sup>77</sup> Additionally, the detainees worked alongside 150 Ragnellian nationals who were subjected to similar treatment.<sup>78</sup> There were no distinctions based on nationality and the UAC detainees were paid wages commensurate to the nature of the work.<sup>79</sup> Therefore, Ragnell acted in accordance with the Treaty as the prerequisite conditions concerning utilization of labour have been met.

### **C. TEMPORARY TRANSFER OF UAC DETAINEES TO CAMLANN CORRECTIONAL CENTER WAS IN ACCORDANCE TO THE PROVISIONS OF THE TREATY.**

Ragnell complied with its obligations under the Treaty by **(1)** transferring the UAC

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<sup>74</sup> Treaty, Art. 28.

<sup>75</sup> ICRC Commentary on GC III, Art. 51, ¶ 2719; Diplomatic Conference of Geneva of 1949, *Final Record Vol II-A*, ¶¶ 12-17 (suitable work refers to work appropriate for the intended purpose); ICRC Commentary on GC IV, Art. 40.

<sup>76</sup> UDHR, Art. 23; ICCPR, Art. 10; ICESCR, Art. 6; ECHR, Art. 4; Comm. on Econ., Soc. and Cultural Rts., 35<sup>th</sup> Sess., E/C.12/GC/186, General Comment No. 18, ¶ 17; Bernard Graefrath, *Universal Declaration of Human Rights - 1988*, 14 GDR COMM. FOR HUM. RTS. BULL. 167, pp. 168 (1988); *See Al Skeini v. UK*, 52207/99, Judgement, ¶ 90 (Eur. Ct. H. R. Dec. 12 2001).

<sup>77</sup> SAF, ¶ 44.

<sup>78</sup> Clarifications, ¶ 5.

<sup>79</sup> SAF, ¶ 44; Clarifications, ¶ 5.

detainees to Camlann Correctional Center; and (2) detaining them in the Center.

**1. The transfer of UAC detainees to Camlann Correctional Center was in accordance with the Treaty.**

Ragnell's temporary transfer of UAC members to Camlann Correctional Center was in accordance with the provisions of the Treaty. The 'Detaining State' is authorized to move POWs to a new location in the event that hostilities draw closer to the initial location.<sup>80</sup> There is *opinio juris* to suggest that transfer of POWs can be undertaken by the states to remove the POWs from areas of active combat or danger.<sup>81</sup> As the combat zone drew closer to Fort Caerleon threatening the safety of 1000 detained UAC members, continuing to detain UAC members in Fort Caerleon would have compromised their safety.<sup>82</sup> In light of the above, Ragnell temporarily transferred the UAC detainees in order to comply with its obligations.

**2. The subsequent detention of UAC detainees in the Center was not violative of the Treaty.**

POWs may not be interned in penitentiaries,<sup>83</sup> except in particular cases which are justified in their interest.<sup>84</sup> The temporary transfer of UAC detainees to the Correctional Center was instituted because the combat zone had drawn closer to the Fort.<sup>85</sup> The standards of detention observed in the Center and Fort Caerleon were the same and the UAC members were housed separately from other prisoners.<sup>86</sup> Moreover, the International Committee of the Red Cross was permitted to visit both Fort Caerleon and Camlann Correctional Center to verify if the treatment

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<sup>80</sup> ICRC Commentary on GC III, ¶ 2637; GC IV, Art. 83.

<sup>81</sup> Austl. Def. of Def., Doctrine Publication 06.4, p. 10-1 (2006); U.S. Dep. of Def., Law of War Manual (2016).

<sup>82</sup> SAF, ¶ 49.

<sup>83</sup> GC III, Art. 22(1) ; U.K. Ministry of Def., The Joint Service Manual Of The Law Of Armed Conflict, p. 158 (2004).

<sup>84</sup> Draft Revised or New Conventions for the Protection of War Victims, submitted by the ICRC at the 16<sup>th</sup> Int'l Conf. of the Red Cross, pp. 67-68 (1948).

<sup>85</sup> SAF, ¶ 36.

<sup>86</sup> GC IV, Art. 84; Clarifications, ¶ 6.

complied with international standards.<sup>87</sup> Thus, the Treaty obligations necessitated Ragnell to temporarily detain UAC members in the Center.

**D. IN ANY EVENT, AGLOVALE’S CLAIM ON BEHALF OF THE UAC DETAINEES IS PREMATURE.**

Where there has been a violation of international law in the treatment of a person by a state, local remedies must be exhausted before a claim may be espoused under international law.<sup>88</sup> This principle has been upheld by tribunal decisions and multinational instruments.<sup>89</sup> Until UAC detainees exhaust the remedies available under Ragnellian law, Aglovale would be barred from bringing a claim against Ragnell under international law.

**III. AGLOVALE VIOLATED ITS TREATY OBLIGATIONS BY UNILATERALLY IMPOSING DISPROPORTIONATE AND COERCIVE SANCTIONS AGAINST RAGNELL AND RAGNELLIAN NATIONALS, AND MUST IMMEDIATELY WITHDRAW THOSE SANCTIONS, RELEASING ALL RAGNELLIAN PROPERTY FROZEN AND REINSTATING ALL ASSETS SEIZED PURSUANT TO THEM, AND COMPENSATE RAGNELL FOR THEIR IMPACT.**

Aglovale’s imposition of unilateral economic sanctions targeting vital sectors of Ragnell had a deleterious impact on its trade and commerce,<sup>90</sup> direct repercussions of which were felt primarily by its civil population.<sup>91</sup> Therefore, (A) Aglovale’s adoption of unilateral economic

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<sup>87</sup> GC IV, Art. 85; SAF, ¶ 50.

<sup>88</sup> IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* § 501 (2003); Cançado Trindade, *Local Remedies in International Law* 86 AM. J. OF INT’L. L. 626 (1992).

<sup>89</sup> *Panevezys-Saldutiskis Railway Case (Est. v. Lit.)*, Judgement, 1938 P.C.I.J. (Ser. A/B) No. 76, ¶18 (Feb. 28); *Interhandel Case (Switz. v. U.S.)*, 1959 I.C.J. 6, ¶ 26 (Mar. 21); Alwyn V. Freeman, *The International Responsibility of States for Denial of Justice (London and New York: Longmans, Green and Company.)*, 33 AM. POL. SCI. REV. 900 (1939).

<sup>90</sup> SAF, ¶ 55.

<sup>91</sup> *Id.*, ¶ 54.

sanctions violated its Treaty obligations; and **(B)** Aglovale is obligated to withdraw its sanctions, reinstate Ragnellian property, and compensate Ragnell for their impact.

## **A. AGLOVALE’S UNILATERAL ECONOMIC SANCTIONS VIOLATED ITS TREATY OBLIGATIONS.**

### **1. Unilateral economic sanctions are unlawful under international law.**

The legality of unilateral economic sanctions has not been crystallized under CIL.<sup>92</sup> To the contrary, the UN General Assembly has repeatedly proclaimed that unauthorized and unilateral economic sanctions are not in accordance with international law, especially if they are coercive in nature.<sup>93</sup> In the present case, Aglovale imposed unilateral sanctions in absence of any authorisation by the UNSC with an aim to impede Ragnell from rightfully exercising its *domaine réservé*.<sup>94</sup> Therefore, such coercive sanctions are devoid of legality.

In *Commission v. Luxembourg & Belgium*, the ECJ held that the existence of judicial remedies in a treaty prevents the parties from taking law into their own hands and resorting to the use of unilateral countermeasures.<sup>95</sup> Similarly, the existence of judicial remedies under the Treaty bars Aglovale from taking the law in their own hands and imposing unilateral countermeasures.<sup>96</sup> Therefore, use of unilateral countermeasures is unlawful under the framework of the Treaty.

### **2. Aglovale’s unilateral sanctions are unlawful under the Treaty.**

While the legality of unilateral economic sanctions is not established through CIL, it is often justified on the touchstone of the *Lotus* principle. It provides that states are at liberty to

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<sup>92</sup> Julia Schmidt, *The Legality of Unilateral Extra-territorial Sanctions under International Law*, 27(1) J. CONFLICT AND SECURITY L., 53, pp. 53–81 (2022); Alexandra Hofer, *The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?* 16(2) CHINESE J. INT. LAW 175, pp.175–214 (2017).

<sup>93</sup> G.A. Res. 50/151 (Feb. 9, 1996); G.A. Res 68/200 (Dec. 20, 2013); G.A. Res. 70/151, (Dec. 17, 2015); G.A. Res. 70/185 (Dec. 22, 2015).

<sup>94</sup> SAF, ¶ 56.

<sup>95</sup> Re-Import of Powdered Milk Products (*Commission v. Luxembourg & Belgium*), Judgement, 1964 E.C.J.

<sup>96</sup> Treaty, Art. 41.

conduct their economic relations provided that they respect their freely consented treaty obligations.<sup>97</sup> In the present case, there was an express Treaty obligation on Aglovale to promote economic advancement, social welfare, and free trade.<sup>98</sup> In clear violation of its treaty obligation, Aglovale's sanctions led to the shrinking of Ragnell's economy, and resulted in unemployment, inflation, and difficulty in procuring medical essentials.<sup>99</sup> Therefore, due to the presence of an express Treaty provision for economic cooperation, the imposition of unilateral economic sanctions was unlawful.

### **3. Aglovale's unilateral sanctions violated the principle of non-intervention.**

Unilateral economic sanctions violate the principle of non-intervention if they unjustifiably infringe upon the sovereign rights of a state to conduct trade or decide its foreign policy.<sup>100</sup> The UN General Assembly Resolutions,<sup>101</sup> the UN Secretary General,<sup>102</sup> as well as the Commission on Human Rights<sup>103</sup> have held that US sanctions on Cuba, having third party inducements, entail a systematic violation of the principle of non-intervention. In the present case, Aglovale restricted the trade and ability of Ragnellian entities to enter into contracts with other states and entities by way of secondary sanctions.<sup>104</sup> Furthermore, the inducement of Aglovalean allies to follow the

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<sup>97</sup> The Case of the S.S. Lotus (Fr. v. Tur.), Judgement, 1927 P.C.I.J. (Ser. A) No. 10 (Sept. 7).

<sup>98</sup> Treaty, Art. 2(3).

<sup>99</sup> SAF, ¶ 55.

<sup>100</sup> G.A. Res. 2625 XXV (Oct. 24, 1970); P. Terry, 'Letter to the Journal Unilateral Economic Sanctions and Their Extraterritorial Impact: One Foreign Policy For All?', 18(2) CHINESE J. INT. LAW 425, pp. 425-235 (2019); Hum. Rts. Council, U.N. Doc. A/HRC/RES/34/13, ¶ 4 (Mar. 24, 2017).

<sup>101</sup> G.A. Res. 62/3 (Oct. 30, 2007).

<sup>102</sup> Secretary-General, Report on the Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America against Cuba, U.N. Doc. A/54/259 (1999).

<sup>103</sup> Sub-Commission on the Promotion and Protection of Human Rights, Report on the Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights, U.N. Doc. E/CN.4/Sub.2/2000/33 (2000).

<sup>104</sup> SAF, ¶ 53.

same sanctions regime<sup>105</sup> interfered with the external affairs and foreign policy of Ragnell. Therefore, the imposition of unilateral sanctions violated the principle of non-intervention.

#### **4. Aglovale's unilateral sanctions violated the jurisdictional immunities of Ragnellian entities.**

States,<sup>106</sup> practitioners,<sup>107</sup> and international law scholars<sup>108</sup> have affirmed that the extraterritorial application of unilateral economic sanctions violates jurisdictional immunities accorded to states and their assets even when imposed by any state organ exercising judicial functions.<sup>109</sup> Furthermore, state practice demonstrates a growing trend of according protection to foreign central bank assets.<sup>110</sup> In the present case, Aglovale's Parliament, acting under its quasi-judicial functions,<sup>111</sup> imposed sanctions on Ragnellian banks and state official's assets.<sup>112</sup> Therefore, Aglovale's sanctions against Ragnellian banks and state official's assets serve as categorical violations of the jurisdictional immunities accorded to states.

#### **5. In any event, Aglovale did not have the legal prerogative to impose sanctions in form of countermeasures on Ragnell.**

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<sup>105</sup> *Id.*, ¶ 54.

<sup>106</sup> Tobias Stoll et al., *Extraterritorial sanctions on trade and investments and European responses*, in STUDY REQUESTED BY THE EUROPEAN PARLIAMENT'S COMMITTEE ON INTERNATIONAL TRADE (2020).

<sup>107</sup> Meredith Rathbone et al., *Sanctions, Sanctions Everywhere: Forging a Path through complex Transnational Sanctions Laws* 44 GEO. J. INT'L L. 1055 (2013).

<sup>108</sup> Susan Emmenegger and Thirza Döbeli, *Extraterritorial Application of US Sanctions Law*, in US LITIGATION TODAY: STILL A THREAT FOR EUROPEAN BUSINESSES OR JUST A PAPER TIGER?: CONFERENCE PROCEEDINGS FROM THE 29<sup>TH</sup> JOURNÉE DE DROIT INTERNATIONAL PRIVÉ DU 23 JUNE 2017 (Bonomi & Schefer eds. 2018).

<sup>109</sup> Convention on Jurisdictional Immunities of States and Their Property, 2004, U.N. Doc. A/RES/59/38, Art. 5; Pierre-Emmanuel Dupont, *Countermeasure and Collective Security: The Case of the EU Sanctions against Iran* 17 J. CONFLICT AND SECURITY L. 301 (2012).

<sup>110</sup> Ingrid Wuerth, *Immunity from Execution of Central Bank Assets*, in THE CAMBRIDGE HANDBOOK OF IMMUNITIES AND INTERNATIONAL LAW 269 (Tom Ruys, Nicolas Angelet, & Luca Ferro eds., 2019).

<sup>111</sup> Report of the ILC on the Work of its 43<sup>rd</sup> Sess., U.N. Doc. A/CN.4/SER.A/1991/Add. I (1991).

<sup>112</sup> SAF, ¶ 53.

The legality of the unilateral sanctions cannot be justified in form of countermeasures. Countermeasures preclude wrongfulness<sup>113</sup> if they **(1)** are undertaken by an injured state in response to an internationally wrongful act; **(2)** are necessary and proportionate; and **(3)** do not affect the obligations for the protection of fundamental human rights.

*i. Aglovale is not an injured state as Ragnell did not commit any internationally wrongful act.*

Ragnell's actions constituted lawful use of self-defensive force as envisaged under the Charter.<sup>114</sup> Consequently, any wrongfulness on Ragnell's part is precluded.<sup>115</sup> Therefore, neither did Ragnell commit any internationally wrongful act, nor can Aglovale claim to be an injured state having the prerogative to impose countermeasures.<sup>116</sup>

*ii. Aglovale's sanctions were not necessary or proportionate.*

Even if Ragnell committed an internationally wrongful act and Aglovale was an injured state, the countermeasures imposed were neither necessary nor proportionate. Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.<sup>117</sup> Sanctions must also be targeted in nature and should not result in collateral damage to third party states or civilians.<sup>118</sup> For instance, the sanctions regime adopted by the EU and the US against Iran illustrated how a series of sanctions targeting vital sectors of an economy can have the same disproportionate impact on the non-targeted civil population as that of a comprehensive sanctions regime.<sup>119</sup>

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<sup>113</sup> ARSIWA, Art. 22.

<sup>114</sup> U.N. Charter, Art. 51; *See supra* § 1, II.

<sup>115</sup> ARSIWA, Art. 21.

<sup>116</sup> *Id.*, Art. 42.

<sup>117</sup> *Id.*, Art. 51.

<sup>118</sup> G.A., Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights Note by the Secretary-General, U.N. Doc. A/73/175, ¶ 21.

<sup>119</sup> Executive Order 13590 of Nov. 20 2011, Authorizing the Imposition of Certain Sanctions With Respect to the Provision of Goods, Services, Technology, or Support for Iran's Energy and Petrochemical Sectors (U.S.); Hum. Rts.

In the present case, the alleged ‘injury’ to Aglovale can only be *vis-à-vis* the inadvertent death of its civilians, for which it has sought reparations.<sup>120</sup> In contrast, the comprehensive sanctions imposed by Aglovale targeted vital sectors of Ragnell’s economy and caused collateral damage to third parties and civilians,<sup>121</sup> along with a high degree of inflation and unemployment.<sup>122</sup> Therefore, in proportion to the alleged injury suffered by Aglovale, the countermeasures against Ragnell’s economy and civilians were grossly disproportionate.

*iii. Aglovale’s sanctions adversely affected its obligations for the protection of fundamental human rights.*

Aglovalean sanctions had an adverse effect on the fundamental human, economic, social and cultural rights of Ragnellian citizens. Sanctions must always take full account of the rights under the ICCPR and ICESR.<sup>123</sup> Moreover, the European Commission admitted that sanctions “may alter a country’s ability to fight COVID-19 by affecting the procurement of certain goods and technologies,” lead to overcompliance and increase “hardship for the non-targeted civilian population.”<sup>124</sup> In the present case, the sanctions undermined Ragnellian citizens’ right to life, free speech and expression, property, development and an adequate standard of living. They also impaired Ragnell’s ability to procure medical essentials in the backdrop of COVID-19, impacting their right to health.<sup>125</sup> Therefore, the sanctions violated the fundamental human rights of Ragnellians.

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Council, Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights, U.N. Doc. A/HRC/45/7, ¶ 33 (2019).

<sup>120</sup> SAF, ¶ 65.

<sup>121</sup> *Id.*, ¶ 53.

<sup>122</sup> *Id.*, ¶ 55.

<sup>123</sup> Comm. on Econ., Soc. and Cultural Rts., U.N. Doc. E/C.12/1997/8, ¶ 1.

<sup>124</sup> EUR. COMM’N, SANCTIONS: COMMISSION GUIDANCE NOTE ON THE PROVISION OF HUMANITARIAN AID IN COMPLIANCE WITH EU RESTRICTIVE MEASURES (2022), ¶ 1.

<sup>125</sup> SAF, ¶ 54.

**B. AGLOVALE HAS AN OBLIGATION TO WITHDRAW SANCTIONS, RELEASE FROZEN PROPERTY, REINSTATE SEIZED ASSETS, AND COMPENSATE FOR THEIR IMPACT.**

A state which has committed an internationally wrongful act is bound to pay reparations for any injury caused<sup>126</sup> by restitution<sup>127</sup> and compensation.<sup>128</sup> The *Chorzów Factory* case provided that restitution must wipe-out all the consequences of the illegal act and re-establish the pre-existing situation.<sup>129</sup> Aglovale's wrongful actions of freezing bank accounts, seizing assets, imposing travel bans, and prohibiting trade must be restored to *status quo ante*. Furthermore, Ragnell must be compensated for the loss of capital caused due to unemployment, inflation, severe economic decline and trade impairment as a result of Aglovale's sanctions.<sup>130</sup> Therefore, Aglovale is obligated to pay reparations *qua* restitution and compensation in the present case.

**IV. AGLOVALE VIOLATED ITS OBLIGATIONS BY REFUSING TO COOPERATE IN GOOD FAITH IN THE MANAGEMENT OF THE PLASTIC WASTE, WHEREAS RAGNELL COMPLIED WITH ITS OBLIGATIONS BY EXPORTING THE WASTE TO ETNA.**

Ragnell entered into waste disposal negotiations with Aglovale after one of its two main waste treatment plants became inoperative as a result of UAC aggression.<sup>131</sup> These negotiations were cancelled by Aglovale on the basis of alleged Treaty violations by Ragnell,<sup>132</sup> as a result of which Ragnell was compelled to export its plastic waste to Etna.<sup>133</sup> Therefore, (A) Aglovale

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<sup>126</sup> ARSIWA, Art. 31; Armed Activities, ¶ 259.

<sup>127</sup> ARSIWA, Art. 35.

<sup>128</sup> *Id.*, Art. 36.

<sup>129</sup> *Factory at Chorzów*, p. 125.

<sup>130</sup> SAF, ¶¶ 54-55.

<sup>131</sup> *Id.*, ¶¶ 37-39.

<sup>132</sup> *Id.*, ¶ 43.

<sup>133</sup> *Id.*, ¶ 44.

violated its Treaty and general obligations by refusing to cooperate in management of plastic waste; whereas **(B)** Ragnell complied with its obligations in exporting plastic waste to Etna.

**A. AGLOVALE VIOLATED ITS TREATY AND GENERAL OBLIGATIONS BY REFUSING TO COOPERATE IN THE MANAGEMENT OF PLASTIC WASTE.**

**1. Aglovale's refusal to cooperate violated its Treaty obligations.**

Aglovale breached the Treaty as **(i)** it failed to take necessary steps on Ragnell's request; and its conditioning of the performance of Treaty was **(ii)** not justified by *exceptio non adimpleti contractus*; and **(iii)** not a lawful countermeasure.

*i. Aglovale failed to take steps to cooperate with Ragnell's request.*

Parties are obligated under the Treaty to cooperate and take steps reasonably requested by other parties to reduce significant environmental harm.<sup>134</sup> Reasonability of an act depends on the circumstances of each individual case and must be in relation to achieving its objectives.<sup>135</sup> The UAC attacks rendered one of Ragnell's two main waste treatment plants inoperable for 8 months.<sup>136</sup> Furthermore, the waste treatment plant in Aglovale was the only other suitable facility in the Peninsula.<sup>137</sup> Ragnell was thus, reasonable in requesting Aglovale to process the plastic waste generated in the Belt. By cancelling the negotiations, Aglovale violated its obligation to cooperate in good faith and take the necessary steps in response to Ragnell's reasonable request.<sup>138</sup> Therefore, Aglovale breached its obligations under the Treaty.

*ii. Aglovale's refusal to cooperate was not justified by exceptio non adimpleti contractus.*

*Exceptio* is a defence allowing non-performance of a treaty obligation by a party as long

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<sup>134</sup> Treaty, Art. 28.

<sup>135</sup> Whaling in the Antarctic (Austl. v. Japan), Judgement, 2014 I.C.J. 226, ¶ 67, 88 (Mar. 31); Continental Shelf (Tunis./Libyan Arab Jamahiriya), Application to Intervene, Judgement, 1981 I.C.J. 3, ¶ 60 (Apr. 14).

<sup>136</sup> SAF, ¶ 37, 39.

<sup>137</sup> *Id.*, ¶ 39.

<sup>138</sup> *Id.*, ¶ 43.

as the other party has not performed a synallagmatic obligation under the treaty.<sup>139</sup> Furthermore, the defence of *exceptio* applies only where there is a lacuna of express treaty or general obligations.<sup>140</sup> In the present case, the Treaty falls under the existing framework for ascertaining state responsibility,<sup>141</sup> which is sufficient to attribute the same to Aglovale.<sup>142</sup>

*In any event*, Aglovale's non-performance of environmental obligations is not 'equivalent and corresponding'<sup>143</sup> to the alleged demilitarization obligations breached. Therefore, Aglovale cannot justify its non-performance of the Treaty under the defence of *exceptio*.

*iii. Aglovale's conditioning of the non-performance of the Treaty was not a lawful countermeasure.*

Aglovale cannot justify its non-performance of the Treaty on the pretext of imposing a lawful countermeasure. For a countermeasure to be lawful, it **(a)** must be undertaken only against the offending state by an injured state in response to an internationally wrongful act; **(b)** must be reversible; and **(c)** must not affect fundamental human rights obligations.<sup>144</sup>

Ragnell's actions constituted use of lawful self-defensive force under the Charter and any wrongfulness on Ragnell's part is precluded.<sup>145</sup> Furthermore, the effect of countermeasures in the form of non-performance of environmental obligations has the propensity to cause irreversible environmental damage, having far-reaching ramifications even for states other than Ragnell in the

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<sup>139</sup> Application of the Interim Accord of 13 September 1995 (FYROM v. Greece), Judgement, 2011 I.C.J. 644, ¶ 161 (Dec. 5); James Crawford & Simon Olleson, *The Exception of Non-performance: Links between the Law of Treaties and the Law of State Responsibility* 21 AYBIL 55 (2001).

<sup>140</sup> Filipino Fontanelli, *The Invocation of the Exception of Non-Performance: A Case-Study on the Role and Application of General Principles of International Law of Contractual Origin* 1 CJICL 119 (2012).

<sup>141</sup> ARSIWA Commentaries, ¶ 1-6 of General Commentary.

<sup>142</sup> *See supra* § I(A), (B), (C).

<sup>143</sup> Bruno Simma, *Reciprocity*, Max Planck Encyclopaedia of Public International Law (2008), ¶ 2.

<sup>144</sup> Gabčíkovo-Nagymaros Project, ¶. 83, 87; ARSIWA, Art. 49, 50, 51, 52.

<sup>145</sup> *See supra* § I(A), (B), (C).

Peninsula.<sup>146</sup> The cancellation of negotiations led to the non-treatment of waste in the Belt before it was eventually exported to Etna by Ragnell.<sup>147</sup> This exacerbated the adverse effects on the environment and health of civilians in the Belt, violating their fundamental right to health.<sup>148</sup> Therefore, Aglovale’s refusal to cooperate does not preclude its wrongfulness as it was not a lawful countermeasure.

## 2. Aglovale violated the principle of good faith.

Aglovale violated the principle of good faith by refusing to transfer plastic waste from Ragnell for treatment and disposal. Under the principle of *pacta sunt servanda*, states are required to cooperate in good faith with respect to the obligations binding upon them.<sup>149</sup> The duty to act in good faith is to be applied in such a manner that the object and purpose of the treaty is realized.<sup>150</sup> In the present case, Aglovale’s refusal to cooperate in good faith at the reasonable request of Ragnell, failed to realize the objective of reducing the risk or impact of significant environmental pollution.<sup>151</sup> Therefore, Aglovale violated its international obligations by not observing the principle of good faith.

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<sup>146</sup> SAF, ¶ 37, 38, 43.

<sup>147</sup> *Id.*, ¶ 43, 44.

<sup>148</sup> U.N. Charter, Art. 1, 55; Richard Garfield & Sarah Santana, *The Impact of the Economic Crisis and U.S. Embargo on Health in Cuba*, 87(1) AJP 15, pp. 15-20 (1997); U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I) [*hereinafter*, “Rio Declaration”], Principle 2, (Aug. 12, 1992).

<sup>149</sup> Draft Articles on Prevention of Transboundary Harm from Hazardous Activities with Commentaries, adopted by the ILC at its 53<sup>rd</sup> Sess., U.N. Doc. UN/A/56/10 (2001); [*hereinafter*, “Prevention of Transboundary Harm Commentaries”], ¶1 of Art. 4; Gabčíkovo-Nagymaros Project, ¶¶ 141–142; Rio Declaration, Principle 7; The Stockholm Convention on Persistent Organic Pollutants, UN Doc. UNEP/POPS/CONF/4, App. II (2001) [*hereinafter*, “Stockholm Convention”], Principle 24; G.A. Res. 2995 (XXIII), ¶ 3 (Dec. 15, 1972).

<sup>150</sup> Emily M. Weitzenboeck, *Good faith and Fair Dealing in Contracts Formed and Performed by Electronic Agents*, 12 A.I.L.R 83, pp. 83-110 (2004); *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgement, 2010 I.C.J. 14 [*hereinafter*, “Pulp Mills”], ¶ 142 (Apr. 20).

<sup>151</sup> SAF, ¶ 46.

**B. RAGNELL COMPLIED WITH ITS TREATY AND INTERNATIONAL OBLIGATIONS IN TRANSPORTING PLASTIC WASTE TO ETNA.**

Ragnell complied with its Treaty and international obligations as **(1)** Ragnell is not liable for environmental pollution resulting out of the transfer of waste to Etna; **(2)** Ragnell observed the duty of due diligence and environmentally sound management (“*ESM*”) in its transfer of waste to Etna; and **(3)** *in any event*, Ragnell was under a state of necessity to transport the waste to Etna.

**1. Ragnell is not liable for the environmental pollution.**

*i. Ragnell was not the ‘State of origin’ of transboundary harm.*

The ‘State of origin’ of transboundary harm is liable to prevent significant transboundary harm or minimize the risk thereof.<sup>152</sup> The ‘State of origin’ refers to the state in the territory, jurisdiction or control of which the activities resulting in transboundary harm are carried out.<sup>153</sup> In the present case, transboundary harm, if any, was the result of improper disposal of plastic waste by Etna.<sup>154</sup> The responsibility of Ragnell was limited to the transfer of plastic waste to Etna, after which the waste was no longer in the territory, jurisdiction, or control of Ragnell.<sup>155</sup> Therefore, Ragnell was not the ‘State of origin’ and, thus, not liable for causing transboundary harm.

*ii. Ragnell is not liable under the Basel Convention.*

Ragnell, as a non-party to the Basel Convention is not liable under the same. The Convention does not affect transboundary movements taking place pursuant to agreements under Art. 11 if such an agreement does not derogate from the Basel Convention.<sup>156</sup> However, even if the bilateral agreement derogates from the Basel Convention, no obligations are created for non-

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<sup>152</sup> Stockholm Convention, Principle 21; Rio Declaration, Principle 2; Prevention of Transboundary Harm Commentaries, ¶¶ 1-18 of Art. 3.

<sup>153</sup> Prevention of Transboundary Harm Commentaries, ¶¶ 7-12 of Art. 1, ¶ 10 of Art. 2.

<sup>154</sup> SAF, ¶ 45.

<sup>155</sup> *Id.*, ¶ 44, 46.

<sup>156</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989, 1673 U.N.T.S. 125 [*hereinafter*, “Basel Convention”], Art. 11(2).

parties as the basis of their obligation is not the Convention, but the agreement itself.<sup>157</sup> *In any event*, this Court is barred from adjudicating upon the bilateral agreement as the same would involve a determination of Etna's rights and obligations.<sup>158</sup> Therefore, no obligations would be created for Ragnell under the Basel Convention.

*In any event*, if the Basel Convention is applicable, Ragnell is not liable due to illegal traffic of plastic waste. Any transboundary movement of wastes which results in deliberate disposal of hazardous wastes in contravention of the Basel Convention is deemed as illegal traffic.<sup>159</sup> The state whose conduct results in illegal traffic will be held liable under the Basel Convention.<sup>160</sup> In the present case, even if there was any illegal traffic, the same was not due to Ragnell's conduct, thereby absolving it of any violations under the Basel Convention.<sup>161</sup>

## **2. Ragnell observed due diligence and ESM of waste.**

Ragnell did not violate its Treaty and general obligations as it followed due diligence and ESM of waste. The duty of due diligence requires states to take reasonable steps to ensure that their actions do not pose a risk of causing environmental harm.<sup>162</sup> It is an obligation of conduct and not result.<sup>163</sup> Etna's declaration of being adequately equipped for the ESM of plastic waste<sup>164</sup> led Ragnell to conclude that the export of waste to Etna would be the best and only option available

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<sup>157</sup> KATHARINA KUMMER, TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES IN INTERNATIONAL LAW, INTERNATIONAL MANAGEMENT OF HAZARDOUS WASTES: THE BASEL CONVENTION AND RELATED LEGAL RULES 115-117 (2012); Waldock, *supra* note 8.

<sup>158</sup> *See supra* note 5.

<sup>159</sup> Basel Convention, Art. 9 (e).

<sup>160</sup> *Id.*, Art. 9 (2), (3).

<sup>161</sup> SAF, ¶ 45.

<sup>162</sup> Corfu Channel, ¶¶ 22-23; Pulp Mills, ¶ 101; Nuclear Weapons Advisory Opinion, ¶ 29

<sup>163</sup> Pulp Mills, ¶ 101, 197; Prevention of Transboundary Harm Commentaries, ¶¶ 1-9 of Art. 7.

<sup>164</sup> SAF, ¶ 44.

to it.<sup>165</sup> In light of this declaration, Ragnell conducted the transfer with due diligence.<sup>166</sup> Thus, Ragnell is not liable as it exercised due diligence and ESM while exporting waste to Etna.

**3. *In any event, Ragnell was under a state of necessity to transport the waste to Etna.***

Ragnell was under the obligation and necessity to prevent environmental harm in the Peninsula. Therefore, **(i)** Ragnell complied with its Treaty obligations in taking the necessary steps to reduce significant environmental harm, and **(ii)** *in any event*, Ragnell is not liable as it acted under a state of necessity.

*i. Ragnell complied with its Treaty obligations in taking necessary steps.*

Ragnell complied with the Treaty by transporting the plastic waste to Etna. The Treaty empowered all parties to take whatever steps necessary to reduce the risk and impact of significant environmental harm.<sup>167</sup> After Aglovale's refusal to cooperate in good faith, the only environmentally sustainable alternative available to Ragnell was to transport waste to Etna for waste treatment and disposal.<sup>168</sup> In conformity with its obligation under the Treaty, Ragnell's export of plastic waste to Etna minimized the degree of environmental harm as compared to the higher degree of harm it would have caused in the Belt.<sup>169</sup> Therefore, Ragnell has complied with its Treaty obligations.

*ii. In any event, Ragnell acted under a state of necessity precluding wrongfulness.*

Any alleged violation of environmental obligations by Ragnell precludes wrongfulness due to a state of necessity. The defence of necessity has been upheld as customary by this Court and

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<sup>165</sup> SAF, ¶ 46.

<sup>166</sup> *Id.*

<sup>167</sup> Treaty, Art. 28.

<sup>168</sup> SAF, ¶ 46.

<sup>169</sup> *Id.*

its predecessor.<sup>170</sup> In *Torrey Canyon*, after several remedial attempts, Britain bombed the remains of an oil tanker which was spilling oil off the British coast to minimize environmental harm.<sup>171</sup> This act was not met with international protest and indicated Britain's conviction that their act did not violate international law.<sup>172</sup> Similarly, despite several remedial attempts to transfer the waste to Aglovale,<sup>173</sup> Ragnell had to export the waste to Etna under a state of necessity to minimize environmental harm.

Necessity precludes wrongfulness of the act violating an obligation if it is the only way to safeguard an essential interest against a grave and imminent peril and the state invoking it has not contributed to the situation of necessity.<sup>174</sup> The transport of plastic waste to Etna was the only way to safeguard the protection of environment against accumulation of untreated plastic waste in the Belt.<sup>175</sup> The essential interests of the states involved were not affected, nor did the Treaty exclude the possibility of invoking necessity.<sup>176</sup> Lastly, the situation of necessity arose due to the destruction of the waste treatment facility and Aglovale's refusal to treat the plastic waste in the Belt.<sup>177</sup> Therefore, the transfer of plastic waste by Ragnell satisfied the conditions of necessity and precluded it from wrongfulness.

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<sup>170</sup> Gabčikovo-Nagymaros Project, ¶¶ 49-58; Serbian Loans (France v. Yugoslavia), Judgement, 1929, P.C.I.J. (Ser. A.) No 20, ¶ 39, 40, (July 12); Roberto Ago (Special Rapporteur), *Addendum to the Eighth Report on State Responsibility*, UN Doc A/CN.4/318/Add.5-7, Y.B. of the ILC (1980), pp. 14-70.

<sup>171</sup> Home Office, The "Torrey Canyon", 1967, Cmnd. 3246 (U.K.).

<sup>172</sup> PETER MALANCZUK, *AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW* 190 (7th ed. 1997).

<sup>173</sup> SAF, ¶ 39.

<sup>174</sup> ARSIWA, Art. 25; Ago, *supra* note 170, ¶ 33.

<sup>175</sup> SAF, ¶ 46.

<sup>176</sup> Treaty, Art. 28.

<sup>177</sup> SAF, ¶ 37, 43.

## PRAYER FOR RELIEF

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For the aforementioned reasons, the State of Ragnell, the Respondent, respectfully prays that this Honourable Court adjudge and declare that:

- I. Ragnell complied with its Treaty obligations in launching Operation Shining Star and in its attacks on Nant Gateway and Compound Ardan, and is not obligated to pay reparations to Aglovale; and
- II. Ragnell complied with its Treaty obligations by employing captured UAC fighters in the transportation of contaminated plastic waste, and by detaining them in Camlann Correctional Center; and
- III. Aglovale violated its Treaty obligations by imposing unilateral sanctions against Ragnell, and must withdraw the sanctions and compensate Ragnell for their impact; and
- IV. Aglovale violated its Treaty obligations by conditioning its cooperation, and Ragnell complied with its Treaty obligations in transporting hazardous plastic waste to Etna.

Ragnell reserves the right to revise, supplement or amend the terms of its submission, as well as the grounds invoked in this Memorial.

*Respectfully submitted,  
Agents for the State of Ragnell*